

MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING SYSTEMS AND PROCEDURES PANEL

SECRETARY OF STATE
1500 11TH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

TUESDAY, SEPTEMBER 14, 2004

10:06 A.M.

Reported by: Michael Mac Iver

Shorthand Reporter

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

PANEL MEMBERS

Mr. Mark Kyle, Chairperson

Mr. Marc Carrel

Mr. John Mott-Smith

Ms. Caren Daniels-Meade

Mr. David Jefferson

Mr. Lee Kercher

STAFF

Mr. Michael Wagaman

Mr. Stephen Stuart

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PROCEEDINGS

CHAIRPERSON KYLE: I'm going to call the meeting to order.

Good morning, my name is Mark Kyle, I'm the Chair of the Voting Systems and Procedures Panel.

I want to welcome the public, election officials, and vendor representatives here this morning.

I want to particularly welcome the new Riverside County Registrar of Voters, Margaret Dunmore, she's in the audience. Welcome. You have big shoes to fill and I'm glad you're stepping up to the plate and we look forward to working with you.

Two of our Panel members are absent today, Tony Miller, who I begrudgingly allowed a vacation day to so they wouldn't have a family dispute, and Deborah Jones who is out due to illness, I believe.

Caren Daniels-Meade will be joining us momentarily.

But we have a few items on the agenda, so I want to get going. And according to staff, Hart InterCivic has requested that they go first due to time constraints with their flights, and my understanding is that the other vendor representatives have not objected to that. So if that is the case, I'm seeing no heads shaking to the contrary.

Mr. Wagaman, would you please begin with what was

1 Item Number 3.

2 MR. WAGAMAN: Thank you, Mr. Chair.

3 CHAIRPERSON KYLE: Can you direct us to the
4 correct tab, since we have 28 tabs or so in there.

5 MR. WAGAMAN: You're on Tab Number 9, sir.

6 CHAIRPERSON KYLE: Thank you.

7 MR. WAGAMAN: Tab Number 9 is the staff report for
8 this application. This is an upgrade from their currently
9 certified system 3.2 to their new version which will be
10 system 3.4. The system numbers consist of several
11 subcomponents. First is BOSS 3.5.4. This is an upgrade
12 from their current version of BOSS, which is 3.4.0. BOSS is
13 used before the election to create the ballot definition.
14 The modifications consist of several fairly minor anomaly
15 fixes and also improvements to the audio function and some
16 other minor changes.

17 The second component is Ballot Now, Version 2.3.
18 That is actually the same. The modifications on that are
19 from Version 2.2.6. It consists of two anomaly fixes.
20 Ballot Now is used to produce the paper ballots, it's not
21 used to tally paper ballots, it's just used in the front end
22 on the paper ballot system.

23 SERVO 2.0.1.0 is the currently certified version.
24 SERVO is used to back up data from the JBCs and the eSlates
25 and to reset them for new elections.

1 Rally 1.2.0 again has not be modified. It's a
2 package used to collect data from the memory boxes, the
3 mobile memory boxes, which are then transferred to Tally,
4 which is Tally Version 3.2.0. Again, it's not modified from
5 the currently certified version. Tally is actually what is
6 used to tabulate results.

7 Component Number 6 is the JBC Version 2.3.8, which
8 is a modification from the currently certified Version
9 2.0.13. The JBC is used to activate the DREs in the
10 precincts to create the voter access cards, or the voter
11 access numbers or access codes. The system does not use
12 cards.

13 The modifications are to add additional
14 functionalities, two of those are of note. The first is
15 support of a bar code reader, rather than what is done now,
16 which is the poll worker would hand figure out which ballot
17 to create for a voter. There will be a bar code printed
18 next to the voter's name in the roster, that will be scanned
19 using the bar code, and would automatically tell the unit
20 what ballot style is appropriate for that voter and then
21 bring that ballot style up and create the appropriate access
22 code.

23 The second is a change that excludes provisional
24 ballots from the tally tape produced by the JBC. Obviously,
25 this is not as relevant as provisional ballots are not

1 allowed to be used in this upcoming election, and actually
2 cannot be used by the system under California law
3 regardless, which I will get to further.

4 Item 7 is the eSlate, which is the actual DRE
5 itself. It's a modification from Version 2.0.13 to Version
6 2.3.8. The modification is some added functionalities and
7 anomaly corrections. The major added functionality is
8 support for contests that graph onto one or more pages.

9 The final components, 8 and 9, are two pieces of
10 COTS hardware, they're COTS scanners used with a paper-based
11 system. Those are the two pieces of hardware currently used
12 in the County of Orange. The way this system works, unlike
13 some of the other optical scan systems you've seen in the
14 past, is it only captures the ballot image, it does not
15 tabulate at all off the scanner. It captures that ballot
16 image, that ballot image is then used later to do the actual
17 tabulation and counting.

18 Moving on to the testing results. This system
19 does have a NASED number issued, N-1-04-12-12-005. That is
20 to the 1990 standards. For state testing, two issues of
21 note. One, the two scanners that are used in Orange County
22 were not included as part of the state testing, the reason
23 being these are fairly large pieces of equipment. So one of
24 the recommendations you will see later is that prior to the
25 system actually being used, we would go down and do that

1 testing. It's not of particular concern to either the staff
2 or the state's technical consultant because again these are
3 Hart COTS pieces of hardware that are not used to tabulate
4 the actual votes.

5 In addition, during state testing it was
6 identified that the vendor had developed several other
7 additional programs that were used to develop additional
8 functionalities. If you have questions about that, I can go
9 into them. Because these are not COTS pieces of software,
10 one of the recommendations you will again see in the staff
11 report is that any of these additional programs not be
12 installed on the same computer that is running the certified
13 software. None of these components are required in order to
14 meet the California requirements for certification, they
15 just provide additional functionalities beyond that.

16 A review of relevant state and federal regulations
17 was completed, a couple of points of note. The vendor has
18 updated their procedures to add additional security
19 measures. It's chapter nine in both the Ballot Now and the
20 eSlate procedures. All those changes are going to be issues
21 again familiar to the Panel from the last couple of
22 certifications. The system does not include a voter-
23 verified paper audit trail, so, therefore, under the April
24 30th directive, would only be able to be used in the county
25 that currently uses is, Orange, and would have to be

1 modified by July 1 of 2006.

2 One thing of note. On the Voting Rights Act of
3 1965, there was one minor change where Tagalog has been
4 renamed as Filipino in the code. It still is the same
5 language, it's still supported as required.

6 On the casting of provisional fail safe ballots,
7 there is obviously a requirement in California that they not
8 be cast on a DRE. Even if that was not in place, the system
9 actually would not be allowed to use the electronic
10 provisional ballots, the reason being because it does not
11 support the partial county as required to be only counted in
12 the races where the person was eligible. It's not capable
13 of doing that. It's also not capable of putting up that
14 ballot image prior to acceptance or rejection of that
15 provisional ballot. Therefore, all provisional ballots
16 under the system would have to be cast using the Ballot Now,
17 a paper-based system, and that's what's reflected in their
18 use procedures.

19 An additional consideration, as noted before, it
20 does not include the voter-verified paper audit trail and it
21 would be subject to all of the additional security
22 requirements from the April 30th directive from the
23 Secretary.

24 Public comment. We didn't have any timely
25 comments received prior to the binders being distributed to

1 the Panel. We did receive some late comments with have been
2 distributed to the Panel this morning.

3 Moving on to the recommendations from staff.

4 Staff recommends the certification of Hart InterCivic's
5 eSlate system Version 3.4 consisting of BOSS Version 3.4.0,
6 Ballot Now Version 2.3, SERVO Version 2.0.10, Rally Version
7 1.2.0, Tally Version 3.2.0, eSlate 3000 Version 2.3.8, JBC
8 1000 Version 2.3.8, along with the Kodak i830 and Fujitsu
9 4099 with the following conditions:

10 One, staff shall successfully test the two
11 scanners in conjunction with System 3.4 by October 5th of
12 2004. That date was selected because that's the next
13 hearing date for this Panel, so as to allow us to report
14 back by that date.

15 Two, that none of these additional software
16 packages developed by Hart shall be installed on the same
17 system, on the same computer running any of the certified
18 components.

19 Three through five are language developed
20 previously under a previous application, they all relate to
21 compliance with the April 30th directive.

22 Item Number 6 is the standard language we've now
23 been applying to each vendor allowing for modification of
24 the procedures to improve the accuracy, security or
25 reliability of a system. There was a desire to see that

1 included at the last meeting, so I put it in here. There is
2 some additional standard language we include relating to
3 compliance with the Voting Rights Act, those kinds of
4 things, which I have not included, but would also be
5 recommendations.

6 That concludes the staff report. The vendor is
7 present if you have any questions for them or if you have
8 any questions for staff.

9 CHAIRPERSON KYLE: Thank you, Mr. Wagaman.

10 Any questions from the Panel?

11 Well, let me start to the far left, Mr. Mott-
12 Smith.

13 PANEL MEMBER MOTT-SMITH: I'm interested in
14 Condition Number Four. The voting system shall only be used
15 in the County of Orange?

16 MR. WAGAMAN: Correct. That is the only county
17 that is currently using the Hart system, and under the
18 Secretary's directive, the DREs cannot be added to an
19 additional county that is not currently using it unless it
20 includes a voter-verified paper audit trail which this
21 system does not. So, therefore, the certification would be
22 limited to that one county.

23 CHAIRPERSON KYLE: Mr. Jefferson.

24 PANEL MEMBER JEFFERSON: Just for my edification,
25 the version number for eSlate goes from 2.0.13 to 2.3.8.

1 That actually appears to be several substantial changes in
2 the software, in other words, a big jump; is that correct?

3 MR. WAGAMAN: Part of the reason for that is there
4 is a system that was not applied for certification here,
5 System 3.3, so there was two jumps in changes. The firmware
6 is where there biggest changes occurred, in particular to
7 support that bar code functionality which was in response to
8 some of the issues seen in the March election.

9 PANEL MEMBER JEFFERSON: And you're talking about
10 eSlate firmware?

11 MR. WAGAMAN: Unlike some of the other systems,
12 the eSlate and the JBC are much more closely linked to the
13 -- the activator and the DRE are much more closely linked,
14 they are actually daisy chained together under this
15 particular system. So that's why you notice the firmware
16 version numbers are the same because they work in tandem.

17 PANEL MEMBER JEFFERSON: Okay. So I guess where
18 my question was coming from, is we're only a few weeks
19 before the election and we're asked to certify what appears
20 to be a fairly large change in the firmware?

21 MR. WAGAMAN: I would defer to the vendor to talk
22 about all the specifics in the code, but the changes are
23 actually fairly minor, even --

24 PANEL MEMBER JEFFERSON: They are?

25 MR. WAGAMAN: -- though there's a significant jump

1 in the version number.

2 PANEL MEMBER JEFFERSON: Okay.

3 CHAIRPERSON KYLE: Thank you, Michael.

4 Do you want to direct that and ask the vendor
5 about any clarification on that?

6 Can I ask the vendor's representative to come
7 forward please and address this issue for a minute.

8 PANEL MEMBER JEFFERSON: And if you could be a
9 little more specific about what the various changes are
10 between 2.0.13 and 2.3.8? I just wasn't sure I have the
11 whole sense of what they were?

12 CHAIRPERSON KYLE: If you can start out by stating
13 your name and spelling it for the record, please.

14 MR. FLOM: Okay. My name is Scott Flom, F-l-o-m.
15 I'm the Vice-President of Operations for Hart InterCivic.

16 As far as the firmware versions go, the changes to
17 this were as Mr. Wagaman said pretty minor. They dealt
18 with, one, the bar code interface, two, adding some kind of
19 new messages. If there's any delay due to traffic on the
20 network between the devices, the voter is presented with a
21 message now that says please wait while your ballot is being
22 loaded or while your vote is being cast. Prior to that,
23 they were not given any information.

24 Other than that, there really haven't been any
25 major changes to the system.

1 PANEL MEMBER JEFFERSON: Do you have a version
2 history document, not with you today, but I mean I assume
3 you do?

4 MR. FLOM: Uh-huh.

5 PANEL MEMBER JEFFERSON: I mean I guess in the
6 future I would like to request that we see some version so
7 we know the whole sequence of version numbers and the
8 changes that come up. For now this is fine.

9 MR. FLOM: Okay. We can provide that to the
10 state.

11 PANEL MEMBER JEFFERSON: And then, Mr. Chairman, I
12 had one other question not related to this.

13 CHAIRPERSON KYLE: Go ahead.

14 PANEL MEMBER JEFFERSON: That was, this being a
15 DRE system, at our last hearing, we recommended
16 certification for one election only, and my question was
17 does the same reasoning apply to this system, should we be
18 consistent on this point?

19 CHAIRPERSON KYLE: Very logical of you, Mr.
20 Jefferson, good question. Before we go back to that
21 question, because I was actually wondering the same thing, I
22 want to see if there were any questions of the staff or
23 vendor.

24 Ms. Daniels-Meade.

25 PANEL MEMBER DANIELS-MEADE: Mr. Chairman, I was

1 just wondering since it's not specifically spelled out in
2 the recommendation, in the conditions for recommendation, if
3 we also should require that provisional ballots, just to
4 make it official, that provisional ballots will be cast on
5 paper ballots only?

6 MR. WAGAMAN: If you want me to include that, that
7 will be fine. It's, as I said, already in the procedures,
8 but I can include it there as well.

9 PANEL MEMBER DANIELS-MEADE: I think it may be
10 important to just point it out.

11 CHAIRPERSON KYLE: Let me also, just for process
12 sake, formally move that these additional public comments be
13 moved in the record and copies provided.

14 PANEL MEMBER DANIELS-MEADE: So moved.

15 PANEL MEMBER CARREL: Second.

16 CHAIRPERSON KYLE: Thank you.

17 Any opposition?

18 The ayes have it.

19 So they're part of the record since they came in
20 after. And I'm assuming staff counsel that these came in,
21 these are all relevant to this agenda item?

22 STAFF COUNSEL STUART: I just saw them at the same
23 time you guys did.

24 MR. WAGAMAN: They are relevant to items before
25 the Panel today, not this particular item, but one or more

1 of the items today.

2 CHAIRPERSON KYLE: All right. We'll move them in
3 to the record anyways.

4 Now, let's go back to your question, Mr.
5 Jefferson. Do you have any thoughts on it?

6 PANEL MEMBER JEFFERSON: Well, as you know, we
7 were a divided panel last time about whether or not to say
8 strictly one election only or to certify for four or five
9 months and not bother the Secretary of State with a specific
10 ruling should any special election that we don't anticipate
11 come up. My main concern is that we just be consistent,
12 whichever of those decisions we come out with is okay, but I
13 think we should treat all DRE systems alike with respect to
14 our intent to rethink certification issues.

15 MR. WAGAMAN: To provide two points, one point of
16 clarification and one point of information. The system last
17 week in which the Panel recommended that additional item was
18 not a DRE system, it was an optical scan system.

19 PANEL MEMBER JEFFERSON: Excuse me.

20 MR. WAGAMAN: Two, the reason it was not included
21 in the staff report is there was a request from the Chair at
22 the last meeting that staff investigate local elections and
23 the timing of local elections in those particular
24 jurisdictions, and I want to provide that information to the
25 Panel before it made a recommendation relating to that

1 particular item.

2 What staff did discover is that, as Mr. Mott-Smith
3 pointed out at the last meeting, a lot of local
4 jurisdictions do not know when they will have their
5 elections coming up, they are anticipating elections early
6 in 2005. In fact, to provide some information on the
7 problem in nailing this down, Sacramento County at the last
8 meeting said that they did not anticipate elections until
9 later in 2005, came back to staff and informed us that they,
10 in fact, anticipate an election in December of 2004 for one
11 small local election. So as early as December of this year,
12 we will anticipate local elections coming, and that would
13 then under that particular language require additional
14 action by the Secretary of State's office, if the system was
15 to be used in that election.

16 CHAIRPERSON KYLE: Assuming that the Secretary
17 adopts the recommendations of the Panel.

18 MR. WAGAMAN: Right.

19 CHAIRPERSON KYLE: And part of the work was to try
20 to ascertain the factual basis and what might go forward in
21 terms of information for the Secretary so he could make a
22 more informed decision as to whether to adopt that
23 recommendation or modify it or reject it outright.

24 PANEL MEMBER CARREL: Mr. Chair, to comment on
25 this issue, I think it was the most split issue we've dealt

1 with in two years here, which was this issue with a 4-3 vote
2 last week. So I don't know why we even need to do it for a
3 DRE system which explicitly in certification expires and
4 needs to come back to us for review sometime next year
5 because it needs to incorporate a voter-verified paper trail
6 before either June 2006, given the Secretary's directive, or
7 January 2006, if the Governor signs new legislation which is
8 on his desk which would impose it to be January of 2006. So
9 I think if we're planning on doing a review of systems next
10 year, and I think it's wise to do that, I think we can still
11 do a review of systems knowing full well that this may be
12 used in one county next year.

13 And to add to the discussion about where and when
14 there might be elections next year, there's also been
15 pundits suggesting that the Governor may himself call
16 another statewide election on a measure regarding
17 reorganization of state government. So I think everything's
18 totally up in the air. I don't know that it's necessary as
19 a condition of this certification.

20 CHAIRPERSON KYLE: Other discussion?

21 PANEL MEMBER MOTT-SMITH: I'm in support of Mr.
22 Carrel's statement. Basically, I think we can accomplish
23 the review without confusing the situation in 2005.

24 CHAIRPERSON KYLE: In terms of consistency, Mr.
25 Jefferson, I guess that I would agree that we have adequate

1 conditions on this one. What we should really do is revisit
2 last week's with more information to provide to the
3 Secretary so that he can either adopt wholesale or modify
4 that particular recommendation so it more accurately
5 comports with maybe something along these lines.

6 Then I'll open it to any public comment on this
7 particular submission having to do with Hart InterCivic
8 eSlate.

9 Kim Alexander.

10 MR. WAGAMAN: And are we going to have any
11 limitations on time this morning?

12 CHAIRPERSON KYLE: Yes, we are. Three minutes.

13 MS. ALEXANDER: Good morning. Kim Alexander and
14 the California Voter Foundation.

15 I have a question about the Hart procedures. I'm
16 just looking over the procedures for the eSlate electronic
17 voting system, and on page 20 is the procedures for closing
18 the polls. And Item 4.6.5 says "the polls close screen on
19 the JBC includes the capability for printing the tally
20 report, follow the instructions in the eSlate manual.

21 I'm wondering if these procedures actually require
22 that there's a printing of the tally report at the close of
23 polls or if it's something that will remain optional. This
24 printing of vote totals from voting machines is something
25 that is included in the Secretary of State's April 30th

1 decertification orders and the certification requirements,
2 and some of the electronic voting machines in the state have
3 the capability to print a summary report at the close of
4 polls of all the votes cast on each machine, and the ones in
5 Riverside don't. So I would like to see some clarity on
6 whether in Orange County on the eSlate systems there will be
7 or there won't be a printing of the total votes at the close
8 of polls that would be posted outside the polling place, as
9 is required under the Secretary of State's new security
10 directives. That's all, thank you.

11 CHAIRPERSON KYLE: Any one on the Panel want to
12 address that issue? Any Panel member? Caren?

13 PANEL MEMBER DANIELS-MEADE: I would just agree
14 with that, that we should insert the same type of language
15 that we did on past procedures, that requirement they print
16 to report.

17 MR. WAGAMAN: Staff has already been into that, if
18 it's an oversight, then it will be an oversight on staff's
19 part if it's not included. It's something we are looking
20 for in all the procedures.

21 PANEL MEMBER CARREL: Do we know what's in the
22 election manual now?

23 MR. WAGAMAN: That's what I'm right now looking
24 for.

25 CHAIRPERSON KYLE: Do we have anyone either from

1 the vendor or the county that could address that issue?

2 MR. FLOM: Again, my name is Scott Flom with Hart
3 InterCivic.

4 And in the primary election in Orange County it
5 was a requirement of the poll workers to print the close
6 poll report at the end of the day and post those. And
7 unless the county has other direction from the Secretary of
8 State's office, we'll continue that practice.

9 CHAIRPERSON KYLE: Thank you very much.

10 Let's just make it an explicit part of the
11 condition.

12 MR. WAGAMAN: Is the Panel's desire that
13 procedures are added as a condition of certification?

14 PANEL MEMBER CARREL: Added to the procedures,
15 please.

16 CHAIRPERSON KYLE: Consistent with earlier similar
17 directives in the April 30th and May 14th, meaning it has to
18 be done.

19 Any further comments?

20 Then I will entertain a motion --

21 PANEL MEMBER CARREL: Moved.

22 CHAIRPERSON KYLE: -- to adopt.

23 PANEL MEMBER MOTT-SMITH: Second.

24 CHAIRPERSON KYLE: The recommendations to the
25 staff with the modifications suggested by the Panel and duly

1 noted by staff.

2 All those in favor?

3 (Ayes.)

4 CHAIRPERSON KYLE: And opposed?

5 Any abstaining?

6 The ayes have it.

7 Let's go to Agenda Item Number 1, please.

8 MR. WAGAMAN: I just want to make sure we have a
9 vendor representative, which we do.

10 With the acceptance of the Panel members, I would
11 actually address Items 1 and 2 together, they're both
12 applications from Diebold.

13 CHAIRPERSON KYLE: That's fine.

14 MR. WAGAMAN: I will go through the staff reports
15 for each individually, but that allows me to deal with those
16 items at the same time.

17 Item Number 1, which is Tab Number 1 in the staff
18 report, is a modification to the Diebold AccuVote optical
19 scan system. A Panel Member brought up this issue before,
20 this is a different version of firmware that is designed
21 specifically for central count purposes. The version number
22 is 2.0.12. Unlike the previously certified versions from a
23 couple weeks ago, 1.94w and 1.96.4, instead of the results
24 being stored to a removable memory card, the results are
25 transmitted from the optical scan directly to GEMS via

1 direct connection.

2 In addition, one other operational difference is
3 the printer built into the AccuVote-OS does not print the
4 zero tape and the tally tape and the summary tape at the
5 end, the reason being no results are stored on that unit, so
6 therefore it's not capable of doing that. Instead those
7 zero tapes and those summary tapes are produced directly
8 from GEMS itself.

9 The affected item on the application is the
10 Accufeed. The Accufeed is a piece of hardware, it has no
11 firmware associated with it. What it is is it's a piece of
12 equipment that sits on top of the AccuVote-OS and runs the
13 ballots through so the ballots can be run through at a
14 higher rate of speed. It can store around 200 ballots at a
15 time. So it's not a particularly high speed scanner, but it
16 is a higher speed scanner than the manual process that would
17 otherwise be used.

18 It's worthy of note that the Accufeed was not
19 tested with the other two firmware version numbers, so
20 therefore, if the Panel takes the staff recommendation, the
21 Accufeed could only be certified with the firmware Version
22 2.0.12.

23 Item 3 is the GEMS 1.18.19 that has come before
24 the Panel several times before. Federal testing. We have
25 received letters from the ITAs that federal testing has been

1 completed, however, we have not received the final reports
2 and a NASED number has not been issued. When we get to the
3 staff report, you will see a recommendation that both of
4 those be received prior to final certification and with the
5 time sensitive date as was requested from the Panel at the
6 last meeting.

7 State testing was successfully completed here in
8 Sacramento in early September. Review of compliance with
9 state and federal laws was completed. Most of these are the
10 exact same thing, so I want to cover it under the previous
11 certification procedures, the same as the procedures
12 previously reviewed by the Panel, the same security
13 measures. There was one section added relevant to the
14 operation of a central count OS. That was section 1.3.8 in
15 the procedures, that's the only modification from the
16 previously certified version of the procedures, proof that
17 those documents have been received.

18 Additional considerations. The vendor's intent,
19 if this is not certified, is to only use the 1.94w and the
20 1.96.4. There were other versions of the central count
21 firmware in the field, as identified during the RNG audit.
22 Those versions we have not been able to verify certification
23 of, therefore, again we're going to recommend as has been
24 done in the past that if this version is certified, that any
25 of those versions be replaced with the now certified version

1 at vendor expense.

2 Public comment. Again, there were late comments
3 received which were distributed to the Panel under the
4 previous item.

5 Recommendations from staff are that Diebold
6 Election Systems Inc's GEMS 1.18.19, AccuVote-OS 2.0.12, and
7 Accufeed be certified with the following conditions: That
8 the final ITA reports be received by September 27th, 2004.
9 That date was selected based on conversations between staff
10 and also the independent consultant and also the vendor with
11 the ITAs. It was also based on the amount of time provided
12 to the previous vendor to complete that process.

13 Two, that the vendor must obtain and submit a copy
14 of federal qualification for all systems and components,
15 again, by September 27th.

16 Three, Uncertified equipment will be currently
17 certified with what would now be certified equipment by the
18 November election.

19 And Item 4 is again that standard language as
20 relevant to modifications to the procedures to encourage the
21 security and reliability and accuracy of the system, again
22 with all of the other standard boilerplate language that we
23 had in the past.

24 That completes the Item 1 staff report.

25 The Item 2 staff report would be Tab Number 5 in

1 your binders.

2 This is an additional software package that will
3 go along with the AccuVote-TS system. The program is called
4 VCPProgrammer, Version Number 4.1.11. It would be used with
5 all the same components previously certified with the TS,
6 the GEMS 1.18.19, the AccuVote-TS 4.3.15D and the Key Card
7 1.0.1.

8 VCPProgrammer is used to facilitate early voting.
9 As the Panel may note from the previous meeting, the card
10 activators currently certified are only able to hold eight
11 ballot styles, which is obviously not enough for an early
12 voting situation where you need all the ballot styles in the
13 jurisdiction. What VCPProgrammer does is it installs on a
14 COTS piece of hardware and basically any PC, it is then
15 loaded with a file that's created by GEMS that contains all
16 the various ballot styles available up to the election. It
17 can then be used in one of two modes, an automatic or a
18 manual mode.

19 Under the automatic mode, the system is used in
20 conjunction with the county's voter registration system, so
21 a poll worker would select the voter from the voter
22 registration system and the system will then automatically
23 create that voter access card without any other steps
24 required by the person using the system.

25 Under manual mode, it did not need to be used with

1 the voter registration system. Instead, the poll worker
2 would figure out what precinct and what ballot style is
3 relevant and manually select that, and then that card would
4 be created.

5 VCPProgrammer has not been previously certified in
6 California, it was applied for previously but was not
7 certified.

8 GEMS again is the same version used before, the
9 difference in its interaction is before VCPProgrammer created
10 that text file that is used by VCPProgrammer to create the
11 various ballot styles.

12 The AccuVote-TS, the interaction is the same and
13 it takes the card that's been created by in this case
14 VCPProgrammer and is used to activate the system. And the
15 Key Card Tool, again, creates the ability to use a dynamic
16 user to find passcodes and encryption and can be used in the
17 same way with VCPProgrammer as it is with the stylus to have
18 that functionality.

19 Again, on the item of federal testing, we have
20 received the letters, we have not received the reports or
21 the NASED number. So, again, you'll have the same
22 recommendation with that same date of September 27th for
23 them to complete that process, with the qualification on
24 both systems will be to the 1990 standards.

25 State testing, again, was completed by the state

1 and the state's technical consultant. Two security issues
2 were raised that are relevant to the way the system works.
3 Because this program is designed to be installed on a PC, it
4 does raise certain security concerns because the PC could be
5 out in the field outside of the physical security of the
6 county's office, and because it may or may not be used in
7 interaction with the voter registration system.

8 Because the system is going to be used in
9 different ways in each county, the security method that is
10 recommended by staff, that as the Secretary has required in
11 the past, that the counties using the systems submit a
12 security plan for how they are going to use it, because
13 security issues that may apply to one county may not apply
14 to a different county depending on how they are using this
15 particular program.

16 The other issue identified is that this text file
17 that's generated by GEMS can be potentially modified. It's
18 not protected in any way. That will not affect the
19 tabulation. It would affect, if it was modified, it could
20 create an error where somebody's card is activated -- the
21 poll worker activates the card as a Democratic ballot, when
22 in fact it's a Republican ballot, the TS would still say
23 it's a Republican ballot. It would not do anything other
24 than create that confusion potentially there. But, again,
25 because of that issue, the recommendation is that the

1 counties submit security procedures for how to prevent those
2 kind of problems.

3 Review of compliance with state and federal laws
4 was completed. Again, the firmware version or the
5 procedures are the same as those that have come before the
6 Panel before. There was a modification to recognize all the
7 various ways that cards can be activated and making the
8 differentiation between the operation, for example, of
9 stylus and the operation of VCPProgrammer. That was section
10 number 3.2 in those procedures. Other than that, they are
11 the same procedure with the same additional security you'll
12 find that the Panel seen before.

13 Documents have been received for this application.
14 Again, because this system does involve touchscreen DRE that
15 does not include the voter-verified paper audit trail, there
16 will be a timing out on it and it will also be limited to
17 those counties that currently use that TS system, it's the
18 same language from the previous certification on the TS.

19 Public comment. Again, there was some late
20 comments received, that's been distributed to the Panel.
21 Therefore, the staff recommendation is that Diebold's
22 VCPProgrammer 4.1.11, GEMS 1.18.19, AccuVote-TS 4.3.15D, and
23 the Key Card Tool Version 1.0.1 should be certified with the
24 following conditions:

25 Submission of the ITA reports again by September

1 27th. That the federal qualification with NASED number be
2 received by September 27th. Three, this isn't a new one,
3 but any jurisdiction intending to use the VCProgrammer in
4 the election must submit a security to and receive approval
5 of that plan from the Secretary of State's office for that
6 election. The security plan shall specifically include
7 information on the physical and technical security of the
8 computers running VCProgrammer, how the jurisdiction will
9 prevent tampering with the files associated with
10 VCProgrammer, and how the county will prevent the creation
11 and use of unauthorized voter access cards using
12 VCProgrammer.

13 Items 4 through 6 are the additional requirements
14 from the April 30th directive from the Secretary. The
15 counties it would be limited to are obviously different from
16 the previous one. It would be Alameda, Plumas and the
17 County of Los Angeles for early voting only.

18 And Item 7 is again that boilerplate language
19 relating to modification of procedures to enhance the
20 security, accuracy, reliability of the system.

21 That concludes the staff report. We do have a
22 representative of the vendor present, if there are questions
23 for them as well.

24 CHAIRPERSON KYLE: I'm going to open up discussion
25 on the first application having to do with AccuVote-OS

1 2.0.12.

2 Any questions or comments from the far left?

3 Working my way this way.

4 Mr. Carrel.

5 PANEL MEMBER CARREL: There was a comment in Mr.
6 Freeman's report that says some records are retained in
7 memory and the security of the system for counties is a
8 requirement of tamper-proof seals and/or locks to be used
9 prior to and during by counties during operation for denial
10 of service types of attack. I'm just wondering if that is -
11 - and I can't find it, because I don't know where to look,
12 in the procedures?

13 MR. WAGAMAN: Can you say what you're looking at
14 so I can check into that?

15 PANEL MEMBER CARREL: Page 3 of 4 on Tab 2. The
16 third paragraph says no records. He recommends getting
17 approved seals and locks.

18 MR. WAGAMAN: There is a requirement in the
19 procedures for approved seals and locks that was already
20 part of the previous language.

21 PANEL MEMBER CARREL: Okay, thanks.

22 CHAIRPERSON KYLE: I have a couple. Then for the
23 submission, what are the affected counties?

24 MR. WAGAMAN: The vendor would be better qualified
25 to answer that because some of the counties that currently

1 use central count optical scan may not be using this
2 version, they may be using the previous version, the 1.94W
3 or the 1.96.4.

4 CHAIRPERSON KYLE: Okay. So do we have any idea
5 where this may or may not be installed?

6 MR. WAGAMAN: I have that information, I do not
7 believe I have it with me. I have to send somebody up to go
8 get that for me.

9 CHAIRPERSON KYLE: Okay.

10 Can I have a vendor representative step forward,
11 because I also have another question that has to do with
12 this.

13 So if you would identify yourself for the record,
14 please?

15 MR. SINGLETON: For the record, I'm Marvin
16 Singleton, S-i-n-g-l-e-t-o-n.

17 Mr. Chairman, I believe the majority of the
18 counties do use central count for their processing of
19 absentee and election ballots, the absentee processing of
20 ballots.

21 CHAIRPERSON KYLE: Okay.

22 MR. SINGLETON: I don't have a specific number, I
23 would say a majority. I do not think Los Angeles is because
24 of their Ink-A-Vote system, but I would say a majority of
25 the counties do use it.

1 CHAIRPERSON KYLE: Okay.

2 MR. WAGAMAN: We're having somebody retrieve that
3 information right now.

4 CHAIRPERSON KYLE: Okay.

5 MR. WAGAMAN: So if you want to proceed with
6 public comment and the other comments from the Panel
7 members, we'll have that before you reach your final
8 deliberations.

9 CHAIRPERSON KYLE: Okay. In one of your
10 comments -- would you stay there, Mr. Singleton.

11 One of your comments earlier, Mr. Wagaman, had to
12 do with if we didn't get certification, if we didn't get the
13 ITA report and the NASED number, that it would default in
14 part to 1.94W and 1.96.4?

15 MR. WAGAMAN: Correct. They can still count their
16 ballots using those other version numbers, it just would not
17 be as efficient a process. So they could use that other
18 firmware version.

19 CHAIRPERSON KYLE: So are 1.94W and 1.96.4, are
20 those the current installations?

21 MR. SINGLETON: Yes.

22 CHAIRPERSON KYLE: Right now?

23 MR. SINGLETON: As Mr. Wagaman said, if this
24 version does not meet the various criteria, all that would
25 be required is to pre-sort the ballots by precincts and they

1 would use the 1.96.4 or the 1.94W to count the ballots in
2 that jurisdiction.

3 CHAIRPERSON KYLE: My concern is granting
4 conditional certification today, maybe in an effort to be
5 efficient, install the new version and not get the
6 certification in a timely fashion. And then have to go
7 through some of the rigamarole we went through in March of
8 this year where we had to uninstall and default back to
9 1.94W.

10 MR. SINGLETON: We have previously announced to
11 all the California customers to plan not to use it. So it's
12 much easier to continue that thinking, and if we were to
13 receive the state condition, it would be just replacing the
14 memory chip sets in the optical scan machines that are at
15 the counties.

16 CHAIRPERSON KYLE: So leave the 1.94W, the 1.96.4
17 and wait until the date certain with the ITA report and the
18 NASED number. And then does that allow enough time for
19 timely installation?

20 MR. SINGLETON: Yes, sir. All you're doing is
21 basically changing the memory chip sets and the machines are
22 already at the election office centrally located. The
23 central count is not used in a field environment at a
24 precinct, so these would be a limited number of machines.
25 Some counties use two machines, some counties might use ten,

1 so it's a matter of changing the chip sets out.

2 MR. WAGAMAN: Yes. As the vendor was saying, this
3 is a central count system, so you're having to park your
4 equipment in with the precinct count equipment.

5 CHAIRPERSON KYLE: I just don't want to put the
6 counties through the grief and then the expense in terms of
7 the staff time of installing and reinstalling or
8 uninstalling if we don't have it. And in the
9 recommendation, Mr. Wagaman, what was the date that the
10 recommendation is for?

11 MR. WAGAMAN: It was the September 27th date.
12 That was based again on conversations with the federal
13 process about where they are in that status, both from us,
14 from the vendor and from Mr. Freeman. It's also an
15 equivalent amount of time that you provided ES&S when this
16 issue arose on the 9th.

17 CHAIRPERSON KYLE: Okay. Can I hear from any of
18 the counties?

19 Thank you, Mr. Singleton.

20 Can I hear from any of the counties if they
21 believe the 27th isn't an adequate time?

22 MS. HENCH: Debbie Hench, San Joaquin County
23 Registrar of Voters.

24 It's questionable. Some of the counties, we start
25 October 4th issuing absentees. We can't start counting them

1 until seven days before the election. And what this process
2 does is saves time, especially for the large counties that
3 have -- you know, we're going to have around 70,000
4 absentees, Alameda may have 200,000 absentees. If you have
5 to hand sort those, that's when you start getting the delay.
6 You know, central count is a real help in that process
7 because you just feed them through, the computer is sorting,
8 not us.

9 So if you wait until the 27th, we really don't
10 know what the impact is. We know we have until that seven
11 days before, but you want to test it. You don't want to
12 say, okay, I hope we got it today, we can run them today.
13 We don't want to do that because we have to do our logic and
14 accuracy tests on that just like everything else.

15 CHAIRPERSON KYLE: Okay. Thank you, that's
16 helpful.

17 MR. WAGAMAN: And obviously if we receive the
18 federal reports tomorrow, if the Panel were to take that
19 action, then we receive those reports tomorrow.

20 PANEL MEMBER JEFFERSON: What do we know about the
21 likelihood of that?

22 CHAIRPERSON KYLE: What do we know about the
23 likelihood of that was the question?

24 MR. WAGAMAN: The likelihood is everyone is of the
25 belief that we will have them by the 27th, we may have them

1 sooner than that, but obviously one of the effects that has
2 happened is of us putting time certainty is now all the
3 vendors are pushing the ITAs to complete their reports in a
4 timely fashion. So it's going to be an issue of what order
5 they take things, so which order they come through, the
6 final NASED numbers being issued, I don't know.

7 CHAIRPERSON KYLE: Ms. Daniels-Meade, did you have
8 any questions or comments?

9 PANEL MEMBER DANIELS-MEADE: No. The only concern
10 I had to do with the technical expert's recommendation with
11 respect to tamperproof seals and Marc brought that up and we
12 were assured that that procedure is sound.

13 CHAIRPERSON KYLE: Okay. We'll take public
14 comment on this particular point.

15 Kim, you're going to pass? Thank you.

16 Maureen Smith, did you want to comment on this one
17 or speak in general?

18 MS. SMITH: In general about the two items, just a
19 big question, it's not a comment.

20 CHAIRPERSON KYLE: Okay. And identify yourself
21 for the record.

22 MS. SMITH: My name is Maureen Smith from Peace
23 and Freedom Party and Santa Cruz County.

24 My question is the same as one of the questions I
25 asked at the last meeting, does this system allow for back

1 door entry and, you know, are you taking that into
2 consideration in whether or not you're going to approve it?

3 And to finally ask one other question, I won't
4 have to ask it later, I still have to ask one question at
5 the very end, but that is it is my understanding that all
6 systems will be looked at and not just DRE systems after the
7 election? It was my understanding from a decision at the
8 last meeting, and I want to be accurate in my understanding.

9 Thank you.

10 CHAIRPERSON KYLE: Thank you.

11 Any Panel reaction, comment.

12 PANEL MEMBER JEFFERSON: With regard to your
13 question about the back door, this system does use GEMS
14 1.18.19 and all of the same issues that have been discussed
15 before still apply to this one, if that answers your
16 question.

17 MS. SMITH: It does.

18 CHAIRPERSON KYLE: Mr. Clark, I assume you want to
19 speak on this point?

20 MR. CLARK: My name is Brad Clark, I'm the
21 Registrar of Voters in Alameda County.

22 And as a user of the optical scan central count,
23 if it's available, I have a question of the Panel who's
24 talking about security seals on the system. I don't know
25 where to put it, we don't have a memory card, so we can't

1 seal that. We don't print out tapes, so we can't -- we can
2 seal the printer compartment, but we don't print anything.
3 So I would just kind of like to know where you want me to
4 put this seal, because I don't see the usefulness of it when
5 we're using these machines in our computer room, which is an
6 alarmed, locked room with only our staff in it. And I don't
7 see what there is to seal, unless I'm missing something. I
8 understand in the polling place why we want to seal, you
9 know, where the compartments are, but in our central count
10 environment I don't see because there's no memory card.

11 MR. WAGAMAN: The specific issue that Mr. Freeman
12 is referring to is on the back of the unit there are several
13 ports that are available. The county is using the system,
14 those ports may or may not be accessible. If the Accufeed,
15 for example, is on top of the unit, those ports are not
16 accessible, so you would not be able to have those same
17 tampering issues relevant. If the Accufeed is not on top of
18 it, then those ports in the back would be potentially
19 accessible, which is where under the current procedures come
20 in play that a log of any time those ports are accessible
21 would need to be kept, and that's what's under the existing
22 language in the procedures.

23 MR. CLARK: Yes. And we use the Accufeed.

24 MR. WAGAMAN: So at that point it will just be an
25 issue of whenever those ports were accessible, like the

1 Accufeed was removed for some reason, a log would need to be
2 kept with those under procedures.

3 PANEL MEMBER CARREL: Mr. Clark, when you test the
4 machine prior to the election, do you test it with the
5 Accufeed on and do you keep the Accufeed on until the
6 election?

7 MR. CLARK: Yes.

8 PANEL MEMBER CARREL: So you're not removing it
9 and then you seal it up and then reattach it?

10 MR. CLARK: We do remove the Accufeed if they
11 malfunction. If the Accufeeds jam or something and they
12 have to be serviced, they are taken off.

13 PANEL MEMBER CARREL: But once you test it, you
14 keep the Accufeed attached if it is working properly?

15 MR. CLARK: Right.

16 PANEL MEMBER CARREL: So then there would be no
17 need to seal up the ports?

18 MR. CLARK: Right.

19 PANEL MEMBER CARREL: Because they're being used?

20 MR. CLARK: Correct.

21 Thank you.

22 CHAIRPERSON KYLE: Thank you.

23 Any other comments?

24 MR. WAGAMAN: Well, I have that additional
25 information for the Panel members as well.

1 CHAIRPERSON KYLE: Relevant to this point?

2 MR. WAGAMAN: Relevant to the counties using the
3 central count.

4 CHAIRPERSON KYLE: Okay, please tell us.

5 MR. WAGAMAN: During the RNG audit, the following
6 counties were identified that used a version of the central
7 count. It would Alameda, Fresno, Humboldt, Kern, Marin,
8 Placer, San Joaquin, San Luis Obispo, Santa Barbara, Tulare,
9 San Diego, and Solano. Obviously Solano is no longer using
10 this particular system. So that would be a total of 11
11 counties. And again, as the vendor indicated, most of those
12 counties it sounds like would have a desire to use this
13 system again, whether all of them will would be on county
14 discretion.

15 CHAIRPERSON KYLE: Thank you.

16 I'm going to entertain a motion to adopt this one
17 before we move on to the other one. To adopt the staff
18 recommendation with the conditions as they currently stand.

19 PANEL MEMBER DANIELS-MEADE: So moved.

20 PANEL MEMBER CARREL: Second.

21 CHAIRPERSON KYLE: This is just for Item Number 1
22 on the agenda for the Diebold collection system in AccuVote-
23 OS 2.0.12.

24 All those in favor?

25 (Ayes.)

1 CHAIRPERSON KYLE: Opposed? Abstentions?

2 The ayes have it.

3 Let's move to discussion on questions regarding
4 Agenda Item Number 2 on VCProgrammer.

5 Panel Members, any comments or questions? I'll
6 start from my right this time.

7 PANEL MEMBER DANIELS-MEADE: Oh, sure. Get me to
8 the right tab first.

9 MR. WAGAMAN: Tab Number 5.

10 CHAIRPERSON KYLE: I have a couple questions
11 regarding training.

12 You mentioned that procedures are similar to the
13 other ones, however, this is a situation where it seems to
14 have been a training issue in March where we had problems.
15 And I'm wondering if since it's a different system than what
16 was used in March?

17 MR. WAGAMAN: Well, when I said the same
18 procedures, I was referring to the procedures when the Panel
19 adopted the procedures for the TS, which was a month and a
20 half ago. So it's those same procedures with the addition
21 of language about the functionality of the VCProgrammer.
22 And the VCProgrammer has now been certified for use in the
23 state.

24 CHAIRPERSON KYLE: Right. So I have a certain
25 question for the vendor, and if any of the client counties

1 want to come, I would welcome their two cents.

2 How much training is clearly and explicitly
3 articulated in the procedures so that we don't have
4 something like machines unplugged for several days and the
5 batteries inadvertently drained down?

6 MR. SINGLETON: The VCPprogrammer has it's own user
7 manual that has been distributed. If you're asking for
8 specific hours, you'll have to ask that. But this is only
9 used in the TS counties, so it would be Alameda, Plumas, and
10 Los Angeles. So the training of the TS system in itself
11 would include training on the VCPprogrammer. It is not a
12 battery operated device, it is powered by the host system.
13 So it plugs into a PC or a server or a laptop where used.

14 CHAIRPERSON KYLE: Okay.

15 MR. SINGLETON: So that's not any type of --

16 CHAIRPERSON KYLE: That's not an issue?

17 MR. SINGLETON: No, sir.

18 CHAIRPERSON KYLE: Okay. Are there any other
19 issues that might come up given just some of our past
20 experience and before we go forward and possibly give the
21 stamp of approval on something like this. I just want to
22 make sure that those kinds of issues have been thought
23 through and addressed.

24 MR. SINGLETON: I understand. To our knowledge,
25 there are no system failure, single point of failures. If

1 the counties use them in the automatic mode as indicated by
2 the staff, it is tied directly to the voter database, or
3 voter registration database of that county. Otherwise,
4 there are no other components to it. It encodes a card at
5 the early voting location and that is it.

6 CHAIRPERSON KYLE: Okay. Mr. Clark, I see you
7 want to comment.

8 If you could stick around, Mr. Singleton, because
9 I have a couple other questions along these lines.

10 MR. CLARK: Again, Brad Clark, I'm the Registrar
11 of Voters from Alameda County.

12 The way VCProgrammer works, it only works at our
13 early voting sites, so it's only our own staff using it, the
14 poll workers don't use this. And it's hooked into our
15 regular database, it's loaded onto PCs that the staff
16 members at the front counter would use. They put in a
17 voter's name and find that voter in the database, and then
18 the system automatically assigns the correct ballot type and
19 precinct to it to burn the card.

20 Without VCProgrammer, you have to use a
21 touchscreen device which has all the precincts in the county
22 on it and the staff person has to look up the voter, find
23 the precinct, and scroll through the thousands of precincts
24 in the county and find the right one to burn the card, where
25 VCProgrammer finds it for them and automatically burns the

1 card for them.

2 And, again, it's internal staff using it, it's not
3 poll workers using it, so the training is really fairly
4 simple, it's pretty much like issuing a paper absentee
5 ballot, pretty much the same process.

6 CHAIRPERSON KYLE: And how many early voting sites
7 do you have, Mr. Clark?

8 MR. CLARK: For this election, we're only going to
9 have one, just our own office.

10 CHAIRPERSON KYLE: Right.

11 MR. CLARK: In the past we have had five. But we
12 have always done them in city clerk's offices so that we've
13 always trained city staff. We've never had them out at
14 shopping centers or places like that, we've always done them
15 in government buildings. So we've always had public
16 employees who were doing this, either City Clerk staff or
17 Registrar of Voters staff.

18 CHAIRPERSON KYLE: Thank you for that
19 clarification.

20 MR. WAGAMAN: And on that same point, since we
21 don't see county registrars from the other counties present,
22 I believe all the counties from our discussions were
23 planning on using staff, not volunteers, to be using the
24 equipment. Plumas County is again planning on using it just
25 at that central location. Los Angeles, I believe, is

1 considering using it out at remote locations as well.

2 CHAIRPERSON KYLE: That's great.

3 Another question. In the last example, the last
4 submission, there was a default that if the ITA report and
5 the NASED number was not forthcoming by the 27th, it would
6 revert back to the 1.94W and 1.96.4. What happens here if
7 we don't, since we likewise don't have an ITA and a NASED
8 number?

9 MR. WAGAMAN: I can provide the information on
10 what we would require, what the vendors' response will be
11 after the --

12 CHAIRPERSON KYLE: Okay. I'd like to hear yours
13 and I'd like to hear yours.

14 MR. WAGAMAN: For our purposes, VCProgrammer would
15 not be certified for use, so it could not be used. So the
16 county would then either not be able to support its early
17 voting program and would not use that or it would have to
18 use a different functionality to support it such as what was
19 described by Mr. Clark about using the ability of the units.
20 Though I believe most counties would probably -- I would
21 have to default to the vendor as to what those counties
22 alternate plans for early voting would be.

23 MR. SINGLETON: The situation described by Mr.
24 Clark is the fallback if the ITA doesn't have the letter.
25 You take a TS system that would have been in use in the

1 early voting, take it off line, and make it the activator.
2 So the staff person would be looking at a paper poll book,
3 so that when someone walked in be able to look it up in the
4 precinct and then scroll through on the menu bar of the
5 screen of the TS. Then they would type in that code, insert
6 the voter coder card and it would kick back out with that
7 ballot style that they would give to the voter. So there is
8 a backup.

9 CHAIRPERSON KYLE: Mr. Clark, when does your
10 county plan on beginning early voting?

11 MR. CLARK: Well, since we're doing early voting
12 only in our office, we wanted to start on October 4th and
13 absentee voting on that day.

14 CHAIRPERSON KYLE: Okay. So September 27th would
15 conceivably be a deadline that would work for you?

16 MR. CLARK: It should, because this would only
17 apply to about five computers and all in the central office.
18 So this is one of the reasons we did not do outstation early
19 voting this time was because we knew it might be late when
20 we got the certification for VCPprogrammer.

21 CHAIRPERSON KYLE: If you could stick around, I'm
22 told that there are a couple other questions that might be
23 directed to you and --

24 PANEL MEMBER MOTT-SMITH: I'm just going to follow
25 up that Los Angeles County couldn't be here today, but they

1 did call last night and this morning and they expressed two
2 things. One is that they do need to know sooner rather than
3 later, and the message was they needed to know today about
4 the VCPprogrammer.

5 But they also indicated that the security
6 considerations in the staff report were fine with them and
7 that they would amend the security report that they are
8 submitting this Friday to incorporate all of the staff's
9 recommendations.

10 CHAIRPERSON KYLE: Thank you.

11 Caren?

12 PANEL MEMBER DANIELS-MEADE: No, I don't have
13 questions.

14 CHAIRPERSON KYLE: I have one more before I turn
15 to the left.

16 In the staff recommendation, Mr. Wagaman, you
17 suggested Condition Number 3 that security plans be
18 submitted on the physical and technical security of the
19 computers running VCPprogrammer, which I think is an
20 outstanding idea. However, it lacks a date specific as to
21 when we should get those plans so we can review them and
22 give them back.

23 MR. WAGAMAN: That's correct. That was probably
24 an omission on the part of staff. The staff recommendation
25 would be that either prior to use which would be whenever

1 they use their early voting or it would be linked to that
2 September 27th date just to keep everything consistent.

3 CHAIRPERSON KYLE: Mr. Clark, can you just comment
4 on that whether that is something that's -- how that would
5 impact you and your county?

6 MR. CLARK: We could comply with that.

7 CHAIRPERSON KYLE: Okay. If we tied it all to the
8 27th?

9 MR. CLARK: That shouldn't be a problem.

10 PANEL MEMBER MOTT-SMITH: Could I ask Brad a
11 question on behalf of Los Angeles, so I understand it.

12 MR. CLARK: Do I get a raise and a larger staff?

13 (Laughter.)

14 PANEL MEMBER MOTT-SMITH: Chris' comment this
15 morning was that they really needed a decision right away.
16 You said you're doing it just in your office, Plumas is
17 doing it just in their office. LA is doing it out into the
18 communities. Can you explain to me why there would be a
19 difference in their urgency versus your urgency?

20 MR. CLARK: I'm not exactly sure how they link
21 their early voting sites to their database. When we want to
22 do this with a city clerk's office, we have to get lines
23 into the city clerk's office so they can link and do these
24 transactions, and Los Angeles may be having to do that for
25 one thing. Or if they are doing laptop computers, they're

1 probably having to load those laptops with their database.
2 And I don't know how many sites they have. We had like four
3 sites outside the office where I think they had many more
4 sites than that. I think they have fifty or something like
5 that. So I just assume that it's a bigger job.

6 CHAIRPERSON KYLE: Mr. Singleton.

7 MR. SINGLETON: I believe that when we were doing
8 the testing, we made query of Los Angeles and the number was
9 closer to 20. They expressed using the laptop and they were
10 going to consider using the network in automatic mode. And
11 I think that would be their time delay of when you set up
12 the network infrastructure in various locations, it may or
13 may not be within your normal confines. There is a period
14 you have to get out and establish a link and do your testing
15 from a network perspective.

16 CHAIRPERSON KYLE: Mr. Mott-Smith, I think given
17 the fact that there's not a NASED number or an ITA, I, for
18 one, would have severe trepidations about telling Los
19 Angeles anything other than it might be conditionally
20 certified depending on the outcome of this, despite
21 potential operational hurdles.

22 PANEL MEMBER CARREL: I would concur with your
23 trepidations. Being an LA resident, I voted for early
24 voting in March. They do use a laptop and that brings my
25 concern, because they also don't use staff at all sites.

1 They do have volunteers at some sites, so training does
2 become an issue. I don't know though if they have staff
3 just working laptops and that's an issue I think we can -- I
4 would have liked someone from LA to clarify, I don't know if
5 there is anyone here that can give that answer.

6 My concern is those laptops and placing the
7 VCProgrammer on those laptops and the security of those
8 laptops so that they're not used for something else after
9 testing, the assurance of virus protection to make sure that
10 it's clear of viruses before VCProgrammer is installed. And
11 I don't know what the requirements are for that?

12 MR. WAGAMAN: Well, there are some specific things
13 that are required in the procedures that are general issues.
14 Specific to each individual county, as I said the operation
15 is different. In that particular situation where a county
16 was using it outside of the office on a laptop, the things
17 we would be looking at are who are the people who have
18 access to that. There are ways you can use the Key Card
19 Tool so you can make it such that the cards activate it by
20 the VCProgrammer for early voting would not be able to be
21 used on election day. So the concerns about them just
22 creating card block would be mitigated, things along those
23 lines. Like you said in the procedures as I recall it makes
24 reference to the same security should be built around any
25 computer using VCProgrammer, any computer running GEMS,

1 which would include, as you said, the virus protection and
2 those kind of issues. But again, it's going to be relevant
3 to how counties use it and where we need to build up the
4 wall around the VCPprogrammer.

5 PANEL MEMBER CARREL: And you have the condition
6 of a security plan from each county be submitted before they
7 install VCPprogrammer, correct?

8 MR. WAGAMAN: Correct. And I believe the Chair
9 has expressed an interest in modifying that to the 27th?

10 PANEL MEMBER CARREL: Yes. I would have to concur
11 with that. And it's not just the technical security
12 regarding virus protection of the software, it's also
13 physical security of the laptops so that there's access
14 limited, not only for password protection, but physical, you
15 know, where they're stored after they're tested and
16 installed and between each early voting day.

17 My concern is less that they are going to pull up
18 a Democratic ballot when they are intended to have a
19 Republican ballot, but that when they pull up a ballot a
20 race would be left off or that they will allow a key card to
21 be used multiple times. And that I think is of bigger
22 concern than the wrong ballot, because I think someone
23 obviously will notice the difference there. They may not if
24 a judges' race is left off or what have you.

25 I do recognize that there is a backup to use the

1 TS machines and that there are TS machines at none of the
2 early voting sites in Los Angeles. So there is a means to
3 program these cards clearly, the VCPprogrammer's the
4 preferred method since they can program them very quickly
5 and in large numbers, but it seems like a small aspect of
6 the whole system. But the PCM device which sought to do the
7 same thing was the critical failure point in San Diego. And
8 part of it was -- and although this is early voting, it's
9 not going to be as critical now, I'm just wondering out of
10 curiosity, and I don't know if this is something the vendor
11 can answer or you can answer, but is the software that's in
12 VCPprogrammer the same software from the PCM device?

13 MR. WAGAMAN: No. It's a different software
14 package.

15 PANEL MEMBER CARREL: Okay.

16 MR. WAGAMAN: And I can't quite speak to all the
17 differences, whether it's developed in parallel or it's a
18 completely separate development track, the developer would
19 have to answer that, but it's not the same firmware.

20 PANEL MEMBER CARREL: Okay, thank you.

21 Would the vendor like to comment?

22 MR. VIADEL: Hi, I'm Tad Viadel, I'm Director of
23 Software Development.

24 In answer to your particular question is
25 VCPprogrammer the same software as is used in the PCM, the

1 answer is no, it's a totally different development group.
2 VCProgrammer actually has been used in other places for
3 quite a while.

4 PANEL MEMBER JEFFERSON: Without a NASED number?

5 MR. VIADEL: In places that don't require
6 certification.

7 PANEL MEMBER JEFFERSON: Okay.

8 CHAIRPERSON KYLE: Like where?

9 MR. VIADEL: Canada. The other thing, just for
10 clarification, what's stored on the smart card is strictly
11 the ballot identifier, not a set of races, so there's no
12 ability to leave off a key race, just so you understand
13 that.

14 PANEL MEMBER CARREL: When you say Canada, isn't
15 there just one jurisdiction in Canada that uses your
16 touchscreen machines?

17 MR. VIADEL: No. There's multiple.

18 PANEL MEMBER CARREL: Okay. Thanks.

19 CHAIRPERSON KYLE: Mr. Jefferson.

20 PANEL MEMBER JEFFERSON: I guess I'm concerned
21 about what we're being asked to do today. This is a major
22 new subsystem, not a lot of experience with it in the United
23 States in jurisdictions that require certification. It's
24 never been certified in California for use, it doesn't have
25 a NASED number yet, although I do expect one. But for a

1 system that's new, a subsystem that's new, we're being asked
2 to conditionally certify, we don't even have an ITA report
3 on it. I'm uncomfortable about even conditionally
4 certifying it without an ITA report considering it's a new
5 subsystem. Not that we can't revisit it again before the
6 election, but without --

7 MR. WAGAMAN: With one point of clarification, we
8 won't be getting a report from Wylie because it's not
9 firmware and the system integration is from CIBER so without
10 -- it's the only report we wouldn't be receiving.

11 PANEL MEMBER JEFFERSON: And so that we do have?

12 MR. WAGAMAN: We have the letter, not the report.

13 PANEL MEMBER JEFFERSON: The letter, not the
14 report, okay.

15 And then the condition on conditional
16 certification here is that the counties submit a security
17 plan which we have not seen and which in my opinion, since
18 this is a major important subsystem, really belongs in the
19 procedures and should be in the procedures for us to
20 recommend certification on, rather than as sort of an
21 afterthought. In other words, the status of this part of
22 the system, the status of the security surrounding this, is
23 important enough to me that it deserves formal procedural
24 status, not a kind of procedural afterthought to our
25 recommendation. I guess I would like to see the ITA report

1 and the security plans before I would feel comfortable
2 voting recommending conditional certification, but I'd also
3 like to hear the other Panel Members points of view on this.

4 PANEL MEMBER CARREL: I'll speak to that. I don't
5 have a problem issuing conditional certification with one of
6 the conditions being a security plan that needs to be
7 approved if we clarify that installation can't be done until
8 we approve the security plan.

9 PANEL MEMBER JEFFERSON: Well, it's all right. Is
10 it we this Panel who will approve it, because I would like
11 to see it?

12 PANEL MEMBER CARREL: I don't know what the
13 process would be.

14 MR. WAGAMAN: The current language refers to that
15 would have to be approved prior to use. It's approved by
16 the Secretary of State's office, it does not speak to which
17 panel will be reviewing that. The one problem with bringing
18 it before this panel is as Mr. Clark has indicated, some
19 jurisdictions plan on using it prior to our next scheduled
20 meeting of October 5th.

21 PANEL MEMBER CARREL: Well, we can always schedule
22 another meeting.

23 MR. WAGAMAN: That would be at the Panel's
24 discretion.

25 PANEL MEMBER JEFFERSON: Well, and there was also

1 a concern, there was some mentioning of possible use in a
2 network manner in Los Angeles County where they have many
3 outlying. And I haven't seen the architecture of this
4 networking system. That immediately raises security alarm
5 bells in my mind, and maybe there's nothing to worry about,
6 but without documents, I can't review it. And that's my
7 concern.

8 CHAIRPERSON KYLE: I would agree with that point,
9 because it's one thing to have a stand alone PC, it's
10 another thing to have a network with a server, and it opens
11 up a whole other level.

12 Let's get some other comments from either of the
13 other --

14 MR. WAGAMAN: Well, I think you guys are
15 proceeding from -- I will ask the Panel, there are some
16 security measures in the procedures at section 3.2.31, if
17 you want to look at some of those things. It doesn't cover
18 everything, because again of the differentiations between
19 how the system would be used in each jurisdiction, page 21,
20 tab 8.

21 CHAIRPERSON KYLE: While we're looking at this,
22 let me ask, Mr. Clark, since it's early voting and you're
23 using at the one site only, presumably taking one of the
24 TS's out of circulation, quote, unquote, to be used in the
25 early voting would have minimus impacts since they're going

1 to be sitting around anyways until election day; is that
2 correct, setting aside the ease of use or the pros and cons
3 of --

4 MR. CLARK: Yes, we would have a TS available to
5 use to do that to do the cards. I think that the
6 possibility of error by the staff person in giving the wrong
7 ballot out is significantly higher if you used the TS
8 machine and you're having to find a thousand different
9 precincts, rather than having the computer select it.

10 CHAIRPERSON KYLE: Thank you.

11 PANEL MEMBER CARREL: I'm looking at the language
12 here and the procedures, and I'm noticing they're sort of
13 recommendations and not requirements, which --

14 MR. WAGAMAN: Again -- oh, go ahead.

15 PANEL MEMBER CARREL: So I would recommend
16 changing some of these advisable, should, to must and
17 required. It says it's advisable to have one person
18 responsible for installing the program and loading files and
19 having access, key personnel should be consulted and most
20 likely must be used to facilitate installation and
21 operation, care should be taken to limit access to only the
22 necessary files in creation of voter access files, and
23 internet access should be disabled during this period, if
24 possible. I would recommend requiring internet access be
25 disabled during the period. The files should be promptly

1 removed at the close of early voting. I would suggest that
2 we change it to must be promptly removed and other things
3 like that. Which one?

4 CHAIRPERSON KYLE: Physical security.

5 PANEL MEMBER CARREL: Physical security, i.e.,
6 being locked in a segregated room as most GEMS servers are
7 may have to be given up as these computers are also utilized
8 in the daily office environment. Most companies have
9 applied additional security to actual computers to limit
10 access and should.

11 I mean we should change that to counties must
12 apply additional security and try to define additional
13 security regarding physical security as well as technical
14 security. It does mention log sheets should be kept to
15 track users as well as reconciliation at the end of the day.
16 The end of the day to balance the numbers of cards issued
17 against the total ballots cast. I think that's critical in
18 regard to the point counted earlier regarding multiple use
19 by an individual card. And then it says physical access
20 will also be limited. So I think these begin to address our
21 concerns, but I don't think they do it as directly as they
22 should or as they must.

23 PANEL MEMBER DANIELS-MEADE: Or it would be
24 advisable.

25 CHAIRPERSON KYLE: Well, Mr. Clark, let me ask you

1 another question. Would that be a laptop used in other
2 daily office environments or would it be a dedicated laptop?

3 MR. CLARK: In Alameda County, we don't use
4 laptops.

5 CHAIRPERSON KYLE: Stand alone desktop?

6 MR. CLARK: Yes.

7 CHAIRPERSON KYLE: And would it be one that would
8 be utilized for other purposes during the day during the
9 week?

10 MR. CLARK: Yes. Generally these are loaded on
11 only the people at the front counter who are doing either
12 hand-entered absentee applications or serving the public
13 that comes in. And the supervisor and the assistant in the
14 absentee section have it loaded on their PCs. I don't have
15 it on mine.

16 PANEL MEMBER CARREL: Why don't we table this
17 until the end of the hearing and take a break before so that
18 we can move onto other issues. I know there's still concern
19 here and I hope there's more information we can gather.

20 CHAIRPERSON KYLE: Well, before we do that, let me
21 just see if there are any other Panel comments.

22 PANEL MEMBER MOTT-SMITH: Basically, I was going
23 to support Mr. Carrel's suggestion that a security plan be
24 submitted before installation and that Mr. Jefferson would
25 be part of the review of that process. It strikes me that

1 this is only for early voting, two out of three counties are
2 in their headquarters environment, and I mean Mr. Clark
3 makes a compelling argument that this provides a greater
4 security against error than the prior system and that's
5 something that we should be looking at. I'd be willing to
6 go forward on that with those conditions.

7 CHAIRPERSON KYLE: Two of the counties are going
8 to have single site, however the largest county is going to
9 have multiple sites and isn't going to have stand alone
10 computers, it's going to be networked, so it's going to be
11 most problematic there.

12 PANEL MEMBER MOTT-SMITH: Again, that's where I
13 think the security plan would be part of that, and I think
14 Mr. Jefferson's participation in that would certainly
15 satisfy my concerns.

16 CHAIRPERSON KYLE: I'm going to open up to public
17 comment, then I'll entertain your idea, Mr. Carrel.

18 All right. Ms. Alexander.

19 MS. ALEXANDER: Kim Alexander, California Voter
20 Foundation.

21 I just have two comments about that. The first is
22 that if it's only applying for early voting sites, if and
23 when you do certify this, perhaps the certification could
24 specify that this only applies to early voting, that
25 VCPProgrammer can only be used for early voting, if that's

1 not already one of the conditions, that you consider for the
2 conditional certification.

3 And the other point to make is that early voting,
4 while it is a nice idea and it's popular, it's not required
5 under law, it's not absolutely necessary to happen, and if
6 you see a security risk as I see it at risk going forward,
7 as I do, based on the discussion I've heard with early
8 voting sites in LA County at remote locations staffed by
9 volunteers working on networked laptops that have lots of
10 ports on them that may or may not be plugged up, that makes
11 me rather uneasy, as I think it does you too. And so I just
12 want to remind you that it's not required under law that
13 this even happen at all. Thank you.

14 CHAIRPERSON KYLE: Thank you.

15 Lucille Moyer.

16 MS. MOYER: Thank you. My name is Lucille Moyer,
17 I'm from San Jose, California. I hadn't planned to comment
18 on this, but I have a couple of questions about this.

19 One of you just brought up the idea, Mr. Jefferson
20 probably, about ending up with more votes than you have
21 voters. And when that happens, even though things are just
22 lock boxes, there's, you know, audit trails of who touched
23 what and who had what plan and all that stuff, in the end
24 when you count it and you've got more votes than you have
25 voters, what do you do? Computers can only regurgitate the

1 same information, they can't recount anything. What do you
2 do? That's what I want to know. You know, how do you fix
3 it? Do you call the voters back to vote again? You know,
4 how do you recount it with no paper trail.

5 So I just want to know if you guys have a
6 contingency plan for recounting these votes that can't be
7 recounted. So it's just a question that always just keeps
8 coming up. No matter what the issue is, it always comes
9 down to the same issue. So I mean I would like to hear some
10 kind of answer about what are you going to do about it when
11 you've got more votes than you have voters. Thanks.

12 CHAIRPERSON KYLE: Thank you.

13 It seems to me that there's a desire, at least
14 among half the Panel to get more information on this. The
15 question I would pose is whether we seek that information
16 and roll this over to a later date, which would be my
17 recommendation, or somehow that you think us delaying it
18 until discussion after the next submission will bring
19 clarity. I'm not sure how that would do it, otherwise I
20 wouldn't entertain it. Do you think there's information
21 that can be gathered within an hour?

22 PANEL MEMBER CARREL: Well, we could table this or
23 set another date prior to the next meeting and have
24 discussion after we have more information. I think the
25 concern here is Los Angeles County which we don't have

1 information on, there's no representative here from, and
2 from all three counties using this early voting, we don't
3 have clarification about the security procedures they're
4 going to implement. So maybe what we do is we -- I mean I
5 don't think we can do anything else other than, if we're
6 planning on approving this, is approve it conditionally with
7 security plans, and if security plans come in, they have to
8 be approved prior to the installation of the system in a
9 county. The only other option is not approving it in any
10 county.

11 CHAIRPERSON KYLE: Well, that's certainly an
12 option I'm considering.

13 Mr. Jefferson.

14 PANEL MEMBER JEFFERSON: See, I'm not sure what
15 the difference is between approving it conditionally now
16 pending the approval of a security plan later and not
17 approving it conditionally now and tabling it and
18 considering it later. And I don't want to send a signal to
19 the counties that this is all but done when I at least don't
20 feel that it is all but done. And I am comfortable, pretty
21 comfortable, with Alameda and Plumas Counties, and maybe we
22 could separate the consideration of them from Los Angeles,
23 but we have too little information about Los Angeles and I
24 think too much hinges on the details there. And even so,
25 and I am still concerned about conditional conditional

1 certification. I mean I think we should consider it when we
2 have all the relevant information.

3 PANEL MEMBER CARREL: I guess my point is that it
4 seems that as a program itself that's not what we're
5 concerned about. We're concerned about implementation by
6 the counties. And so the certification of the system as a
7 system or subsystem, it seems to be adequate to serve what
8 we're trying to achieve with regard to what the vendor is
9 supposed to promote and it meets the technical requirements
10 per our testing. What we're concerned about is
11 implementation by the counties and the procedures
12 implemented by the counties, and so I would recommend it
13 just can't be implemented in the county unless counties meet
14 certain specified requirements such as providing us a
15 security plan that's approved by us. Because we're
16 basically putting it on the counties anyway. But if we
17 don't certify it based on something that's up to the
18 counties, it seems like we are laying blame on a system that
19 is technically satisfactory according to our technical
20 advisors, even though the implementation is what's at
21 question.

22 PANEL MEMBER JEFFERSON: But it's not even that,
23 we have no NASED certification. We don't have that either.

24 PANEL MEMBER DANIELS-MEADE: But we don't have
25 that for any of --

1 PANEL MEMBER CARREL: And the clear condition is
2 we need to receive NASED certification before anyone can use
3 it anyway, apart from the security requirements, and we need
4 to receive that by September 27th.

5 CHAIRPERSON KYLE: Well, I think you have defined
6 the issue though, David, and that is do we conditionally
7 certify it with conditions later or do we table it until we
8 have more information on the 27th. And that would be a
9 federal NASED number, federal qualification, and more
10 specific security plans, and an ability for staff to work
11 with the counties in addressing some of the concerns that
12 we've raised. I don't believe it does meet the technical
13 requirements, I'm of the opinion it's still -- once we get
14 the NASED number, I would feel comfortable saying that, but
15 we don't have the NASED number. We do have a new system,
16 and it gives me pause for thought. Maybe we do bifurcate it
17 into the small counties where it's stand alone and Los
18 Angeles.

19 So I would like to suggest that we take a ten-
20 minute break. And I don't want to make it longer, because
21 we have one more agenda item and we have to be out of the
22 room today. So I think we can do it all, but I have 11:41,
23 I would like to reconvene at a quarter of, at 11:45, so that
24 gives us just six or seven minutes to run out.

25 PANEL MEMBER DANIELS-MEADE: That would be three

1 minutes.

2 CHAIRPERSON KYLE: I'm sorry --

3 PANEL MEMBER CARREL: I have 11:38.

4 CHAIRPERSON KYLE: I'm sorry, ten minutes.

5 (Thereupon a recess was taken.)

6 CHAIRPERSON KYLE: We got some information through
7 Martin Singleton who got a hold of Los Angeles and gave the
8 information to Mike Wagaman.

9 Mike, would you mind reading that.

10 MR. WAGAMAN: The County's intent is to use --

11 CHAIRPERSON KYLE: For Los Angeles, right?

12 MR. WAGAMAN: The County of Los Angeles' intent is
13 to use VCProgrammer at 16 locations, one would be at the
14 central Norwalk facility, the other 15 would be remote
15 locations, eleven of those would be using PCs, four would be
16 using laptops. The program would be linked through a
17 network to their voter registration database. They would be
18 using it in the automatic mode that was described during the
19 original staff report.

20 PANEL MEMBER CARREL: Does that mean that each
21 laptop and PC would have the program on there or the program
22 would come through the network?

23 MR. WAGAMAN: No. The program is loaded on that,
24 then it would be linked through the network in order to link
25 to that voter registration system in order to use it in

1 automatic mode.

2 PANEL MEMBER JEFFERSON: So when you say the
3 network, Los Angeles county is big, we're not talking about
4 a local network here, we're talking about a big virtual
5 private network?

6 MR. WAGAMAN: I don't have additional information
7 on the nature of the network. That would be one of those
8 things we would be looking at in the security plan, either
9 with or without the Panel meeting again, that's one of those
10 things that we would be specifically looking at.

11 CHAIRPERSON KYLE: So let me see if I can
12 recapitulate. Basically, we have a few concerns. One is
13 the distinction between smaller counties that are using a
14 single point and the larger county. The other is addressing
15 security plans and security procedures that are adequate to
16 using a PC or a desktop. It doesn't go to the count
17 tabulations, so we're really just talking about precinct
18 assignment. And we learned from discussions, if I
19 characterize this correctly, Mr. Clark, with Alameda that
20 the front desktop computers that are being used would be
21 with a local area network or the servers based in your
22 office and just locally. Is it with all of the county or
23 just to the elections division?

24 MR. CLARK: May I answer from here?

25 CHAIRPERSON KYLE: Sure.

1 MR. CLARK: The front counter is just to our
2 server.

3 CHAIRPERSON KYLE: Can you hear him?

4 MR. CLARK: The front counter is just to our
5 elections servers. The supervisor and her assistant are on
6 the county intranet.

7 CHAIRPERSON KYLE: The county intranet system,
8 okay.

9 Okay. Slightly stymied here. I'll entertain a
10 motion.

11 PANEL MEMBER CARREL: I would turn my
12 recommendation into a motion that we conditionally certify
13 with all the conditions, including that this only be used
14 for early voting, and with an additional condition that this
15 program cannot be installed in any county until the county
16 receives approval from a security plan for how they intend
17 to use VCProgrammer.

18 PANEL MEMBER DANIELS-MEADE: Second.

19 MR. WAGAMAN: Can I ask a couple questions on the
20 motion?

21 CHAIRPERSON KYLE: Certainly.

22 MR. WAGAMAN: That would also include the change
23 of requiring a submission date on the 27th; is that correct?

24 CHAIRPERSON KYLE: Correct.

25 PANEL MEMBER CARREL: Yes.

1 MR. WAGAMAN: And would that also include Mr.
2 Mott-Smith's language about approval, including that of the
3 Chair of the Technical Oversight Committee?

4 PANEL MEMBER CARREL: I don't know if that needs
5 to be part of the motion, but I think from a staff
6 consideration, using Mr. Jefferson or his review would be
7 advisable.

8 MR. WAGAMAN: Thank you.

9 CHAIRPERSON KYLE: I would also like to have
10 discussed the procedures as they were written are inadequate
11 and they need to be strengthened, so it isn't just a
12 security plan coming from the counties, but the procedures
13 that we currently have where we have shoulds and may.

14 MR. WAGAMAN: Submission from the vendor modified
15 procedures to make the requirements, the section 3.2.3.1
16 requirements as a post recommendation prior to your
17 approval?

18 CHAIRPERSON KYLE: Correct.

19 Is the maker of the motion.

20 PANEL MEMBER CARREL: I would agree to include
21 that as a condition.

22 PANEL MEMBER JEFFERSON: May I ask a question?

23 CHAIRPERSON KYLE: Sure.

24 PANEL MEMBER JEFFERSON: I would just like to know
25 what is the process we will go through to make it our final,

1 or will this be our Panel's final recommendation to the
2 Secretary of State or will we go through another step as a
3 Panel? Just a question.

4 PANEL MEMBER CARREL: If we approve this motion,
5 the only further steps would be from staff, hopefully in
6 consultation with you, reviewing the security plans, and to
7 sign off on the procedural changes. But I mean we would
8 recommend that the Secretary not concur with the
9 recommendation until the procedures are modified as well, so
10 he doesn't do a final sign off until those procedures are
11 changed. And I'm sure the vendor can make those
12 modifications to the procedures within the next several
13 days. It usually takes them three or four days to sign off.

14 CHAIRPERSON KYLE: The alternative is that we
15 could set a date of the 27th to make sure all the ducks are
16 lined up in a row.

17 MR. WAGAMAN: And I have the schedule for the
18 availability of this room, if the Panel decides to go that
19 direction so you can schedule dates.

20 CHAIRPERSON KYLE: What's the 27th look like?

21 MR. WAGAMAN: The 27th, it looks like there's a
22 meeting in the morning, I don't know if it extends all day
23 until 5:00 o'clock. So this room would be reserved on both
24 the 27th and 28th. So we would have to either look at an
25 earlier date on the 24th or the 29th.

1 CHAIRPERSON KYLE: Or find an alternate venue.

2 MR. WAGAMAN: Or find an alternate venue, correct.

3 PANEL MEMBER CARREL: I would recommend Los
4 Angeles, then we would get our answers quicker.

5 PANEL MEMBER MOTT-SMITH: I would like to speak in
6 support of the motion. It seems to me that at least in my
7 mind that the legitimate security issues either have been
8 addressed or can be addressed and can be addressed through a
9 process that involves staff, David, and the approval of the
10 Chair.

11 And I think we have a significant interest in
12 trying to move this forward. Early voting is an opportunity
13 for persons with disabilities in Los Angeles County who
14 don't have access to accessible voting to be able to cast a
15 private and independent vote. It's an opportunity for
16 people with language limitations to also vote in the
17 language that they're most comfortable in. So I think it's
18 important that we move this forward and do signal that we
19 are going to try and move this forward unless we run into
20 something insurmountable with the security review.

21 PANEL MEMBER DANIELS-MEADE: I'm in favor of the
22 motion myself.

23 CHAIRPERSON KYLE: Any other discussion?

24 Mr. Kercher.

25 PANEL MEMBER KERCHER: Based upon the way that the

1 devices are being used both in the small and the large
2 counties, it's not clear to me that we can receive
3 procedures that will ensure that internet access can be
4 disabled. And I will want to know that that is something
5 that can be accomplished, and I don't think we can do that
6 until we see the procedures. There's a possibility that
7 they cannot provide procedures to limit internet access as
8 recommended in the generalized procedures, and I don't feel
9 comfortable supporting the motion to certify these.

10 CHAIRPERSON KYLE: Okay. Any further discussion?

11 PANEL MEMBER CARREL: Let me clarify the motion as
12 to the procedures.

13 CHAIRPERSON KYLE: Okay.

14 PANEL MEMBER CARREL: We need to reiterate what
15 the condition is with regard to revising the procedures by
16 the vendor, or how I can propose it.

17 MR. WAGAMAN: I don't have the exact language, but
18 it would say something to the effect that prior to the
19 September 27th date, the vendor must submit modified
20 procedures regarding security of VCProgrammer, specifically
21 modifying section 3.2.3.1 to make its recommendations
22 requirements.

23 PANEL MEMBER CARREL: That's very good, thank you.

24 CHAIRPERSON KYLE: Okay. So we would be looking
25 at modifying Recommendation Number 3 to set a date specific

1 of September 27th, adding Number 8, only used for early
2 voting, Number 9, can't be installed prior to I'm going to
3 say September 27th as an outside date.

4 PANEL MEMBER CARREL: What can't be installed?

5 CHAIRPERSON KYLE: The VCPprogrammer can't be
6 installed on --

7 PANEL MEMBER CARREL: Well, we should say it can't
8 be installed until --

9 CHAIRPERSON KYLE: Approval.

10 PANEL MEMBER CARREL: Well, the vendor has to
11 submit revised procedures by September 27th, and then it
12 can't be installed in any county until and unless security
13 procedures have been approved by the Secretary of State and
14 that can be no earlier than September 27th.

15 CHAIRPERSON KYLE: I don't want to make it
16 contingent only on -- or I would oppose the motion if it is
17 only contingent of security measures, because we're still
18 waiting for a NASED number. And let's say we get a good
19 security plan and we don't have a NASED number by the 27th.

20 PANEL MEMBER CARREL: I would concur.

21 CHAIRPERSON KYLE: So if all of the conditions are
22 met, the vendor plan, county plan, NASED number.

23 MR. WAGAMAN: Compliance with all the other
24 federal --

25 CHAIRPERSON KYLE: All right. Then that I could

1 live with.

2 PANEL MEMBER CARREL: I concur. I didn't mean to
3 ignore the NASED number.

4 CHAIRPERSON KYLE: It's a minor detail.

5 PANEL MEMBER DANIELS-MEADE: Mr. Chair, I'm not
6 certain that we need to actually make Number 8, I believe
7 you called it, for the early voting. Because if you read
8 the condition that was already set forth in the
9 recommendation from the staff, it says the AccuVote-TS shall
10 only be used in the counties of Alameda, Plumas, and Los
11 Angeles for early voting, and only in the county using the
12 AccuVote-TS with security measures, blah, blah, blah. So
13 we've already covered it, early voting, in that.

14 MR. WAGAMAN: The language applied was actually
15 provided from the previous certification of the TS and it
16 was originally meant to say Alameda and Plumas for any
17 purpose on the TS, and early voting only in Los Angeles, but
18 you can modify the language.

19 PANEL MEMBER DANIELS-MEADE: Right. Other than
20 the fact that simply by putting a comma after Alameda and
21 taking out the and, and agreeing to have it read Alameda,
22 Plumas and Los Angeles for early voting.

23 CHAIRPERSON KYLE: Does that comport with your
24 planned use though, Mr. Clark? It does? Okay.

25 What are you going to use for regular voting, the

1 TS?

2 MR. CLARK: Well, for the regular voting, we're
3 using the Stylus.

4 CHAIRPERSON KYLE: Oh, right. Okay.

5 All right. Then do you accept that as -- I think
6 you're right.

7 PANEL MEMBER CARREL: Concur.

8 CHAIRPERSON KYLE: All right.

9 PANEL MEMBER CARREL: Accepted.

10 CHAIRPERSON KYLE: Modify the language here.

11 PANEL MEMBER CARREL: As modified.

12 CHAIRPERSON KYLE: All right.

13 Then all those in favor -- any further comments,
14 I'm sorry.

15 PANEL MEMBER CARREL: We had public comment.

16 CHAIRPERSON KYLE: We have a second.

17 All those in favor say aye.

18 (Ayes.)

19 CHAIRPERSON KYLE: All those opposed?

20 (No.)

21 CHAIRPERSON KYLE: That's two no's and four ayes.

22 I want to add that I think we should have some
23 type of report back from the staff prior to or about the
24 27th so that there can be public notice on this point.

25 MR. WAGAMAN: Is the Chair's desire to have that

1 in a report on the October 5th meeting date or as a report
2 issued on the website as an adjunct to the current staff
3 report?

4 CHAIRPERSON KYLE: That will be my desire that we
5 have a --

6 PANEL MEMBER CARREL: A status update is what
7 you're saying?

8 CHAIRPERSON KYLE: Yes, a status update.

9 PANEL MEMBER CARREL: The NASED was received and
10 new procedures and what are they and did we receive a
11 security plan?

12 CHAIRPERSON KYLE: Correct.

13 MR. WAGAMAN: So we would post the revised
14 procedures as soon as they become available and then we
15 would post an update as far as the security plans and NASED,
16 et cetera, the other requirements by the 27th.

17 Mr. Stuart points out I can actually have to the
18 28th so that I have a chance to read the reports.

19 CHAIRPERSON KYLE: We'll give you until the 28th.

20 Okay. Let's move to the new Number 4, the old
21 Number 5.

22 MR. WAGAMAN: We're going to be at Tab Number 14.

23 This is an application from Sequoia Voting Systems
24 for a modification to their currently used WinEDS, AVC Edge,
25 Optech 400C package. There are four system components. The

1 first is WinEDS, it's a modification from their currently
2 certified Version 3.0.99 to Version 3.0.134. WinEDS is the
3 election management system software package.

4 The modifications to WinEDS fall into three
5 general categories. The first category relates to the
6 interaction between WinEDS and the 400C. The 400C was
7 previously certified with the condition that it had to be
8 used in conjunction with the EMS Arrow central tabulation
9 software, the reason being there was during state testing an
10 anomaly identified where the results were not properly
11 recorded in the interaction between WinEDS and the 400C, so,
12 therefore, it was required that the 400C had to be used in
13 conjunction with that EMS Arrow. The vendor has made
14 modifications to correct that, so the 400C can now properly
15 work with the WinEDS correctly.

16 The second modification is that the 400C would now
17 be able to support multiscard ballots, which is a desire from
18 at least one of the counties to make use of that
19 functionality.

20 The second category relates to interactions
21 between the WinEDS and the AVC Edge. One of those is that
22 it allows the audio function to follow the same rotation
23 rules as the rest of the ballots. Rather than the audio
24 just reading in alphabetical order, the audio would be
25 rotated in the same order the ballots are rotated on the

1 screen.

2 In addition, there's an anomaly corrected where
3 under the previous version under certain situations, the
4 review screen would appear in english when you're voting,
5 for example, on a character based ballots, like the Chinese
6 ballot, the rest of the ballot would appear in Chinese, but
7 the last page, the review screen, would appear in english.
8 That's been corrected.

9 The third category are added or modified reports.
10 Things like an added report on provisional ballot status,
11 modifications to the Statement of Vote, and a modification
12 to turn out registration reports.

13 The second component is the AVC Edge 4.2A. It's a
14 modification from the currently certified Version 4.2.
15 There's a typo in the staff report on that. The AVC Edge is
16 a self-contained touchscreen voting device. The
17 modification is to correct for a single anomaly that was
18 identified wherein certain situations where a ballot that
19 was a vote for more than one on the review screen would wrap
20 over two columns that in some situations it would cause an
21 error where the system would basically crash and have to be
22 restarted. The vendor had not identified all the various
23 things that had to happen in order to cause that error to
24 happen, but it has been corrected under this new Version
25 4.2A.

1 The third component is the card activator, Version
2 4.3.2. This is the firmware on the unit that actually
3 activates the voter access cards. It's unchanged from the
4 previously certified version.

5 The fourth component is the Optech 400C, Version
6 1.02B. This is a central count optical scan system. It's
7 an older system that predates actually the existence of
8 Sequoia. It has not been modified from the previously
9 certified version, however, some of its functionalities have
10 been changed by the WinEDS as previously discussed with it
11 being able to be used correctly with WinEDS and it now being
12 able to support the multiscard ballots.

13 The federal process. We have again received the
14 letters from the ITAs, however, we have not received final
15 reports and we have not received the final qualification
16 number. So again there will be a recommendation that those
17 be put as conditions with a time specific date. The final
18 qualification will be to the 1990 standards.

19 State testing. The state test finally was
20 completed in late August in Oakland. During state testing,
21 one thing was an anomaly identified where the system
22 recording function cannot support a California primary. It
23 was not capable of reporting a split on a DTS versus
24 declared and then the aggregate. There is a capability of
25 it that was demonstrated using a program called Report

1 Viewer, however, Report Viewer was not part of the federal
2 qualification process. So the recommendation which we'll
3 get to later as to both requiring Report Viewer to go
4 through that independent review prior to being used in a
5 primary and the requirement of Report Viewer to not be
6 installed on a computer running WinEDS until that process is
7 completed, which we'll get to later.

8 A review of the state and federal laws.
9 Obviously, there is a problem as related to its compliance
10 with the California primary rules. There was also an issue
11 identified where the system does include a provisional
12 write-in, and automatic resolution of provisional ballots
13 that were cast in the wrong precinct. However, it was
14 identified that that process does not work for split
15 precincts. So for those ones, the ballot can still be hand
16 recreated, because the system does allow you to view the
17 ballot image prior to acceptance or rejection. So the
18 system can still meet provisional requirements for
19 California, however, the procedures have been modified to
20 say that that automatic function cannot be used in ballots
21 involved in a split precinct.

22 In addition, the system provides procedures
23 submitted for the revised procedures, they have been
24 modified to add the additional security requirements, again,
25 along the same lines as discussed with previous vendors.

1 The system does not currently include a voter-verified paper
2 audit trail, so it will have recommendations for
3 restrictions from the April 30th directive, including that
4 it will timeout after July 1 of 2006 and that it would be
5 limited to those counties that used the system in the March
6 election as applies to the AVC Edge.

7 Again, as discussed, there was another issue
8 identified during federal testing where the resolve write-in
9 process on the system, there's an automatic resolve write-in
10 that can be done directly through the WinEDS that was
11 identified that that would create potential discrepancies
12 between the summary report and the precinct reports,
13 therefore, the federal ITAs are going to recommend that that
14 not be used. The procedure has been modified saying that
15 they cannot be used, so write-in resolution would have to be
16 done through a manual process, not through the built in
17 process in WinEDS.

18 For these couple of anomalies I've mentioned,
19 these are preexisting anomalies in the currently certified
20 versions, these are not new anomalies, they were just not
21 previously identified.

22 I've covered the issue as related to the fail safe
23 provisionals. Procedures have been reviewed, for additional
24 considerations again to acquire from April would apply.

25 Late public comments were received and distributed

1 to the Panel previously under the previous item.

2 As to the recommendations. Staff recommends
3 certification of the Sequoia Voting Systems WinEDS 3.0.134,
4 AVC Edge 4.2A, Card Activator 4.32, and Optech 400C 1.02B
5 with the following conditions, and I'll touch on each of the
6 conditions as we go through them.

7 Conditions 1 and 2 relate to the submission of ITA
8 reports and the final federal qualification, again, with a
9 specific due date of September 27th, the same date as the
10 previous applicant.

11 Items 3 and 4 relate to the function of the Report
12 Viewer program that, A, may not be installed on a computer
13 running WinEDS, as it's not gone through that federal
14 qualification process. It's not required to run a general,
15 but it is required to run a primary, which leads to Item 4,
16 which is that the source code for that be successfully
17 reviewed by independent tester designated by the Secretary
18 of State office prior to its use in a California primary,
19 prior to the use of WinEDS 3.0.134 in a California primary.

20 Item Number 5 relates to the write-in resolution
21 function in WinEDS not being used. As discussed, it would
22 have to be used through a manual process.

23 Item 6 through 8 relate to compliance with the
24 April 30th directive. The vendor has expressed some concern
25 as related to that language and agreements that have been

1 made subsequently relating to the memorandum. So I
2 understand some counties with the vendor, et cetera,
3 although I hope the vendor will elaborate on those concerns
4 after the conclusion of the staff report.

5 And Item Number 9 --

6 CHAIRPERSON KYLE: Mr. Wagaman, I just want to
7 point out you have a verb tense that's incorrect in the
8 first sentence.

9 MR. WAGAMAN: Of which --

10 CHAIRPERSON KYLE: Of Number 6.

11 MR. WAGAMAN: I would point out that that language
12 actually came from the esteemed Mr. Miller.

13 Item Number 9 --

14 CHAIRPERSON KYLE: Number 7 you were on. You were
15 on Item 7.

16 MR. WAGAMAN: Item 6 through 8 all relate to that
17 compliance with the April directive, again, with that one
18 concern that the vendor has raised, which they can come back
19 on.

20 And Item Number 9 is again that standard language
21 as relates to modifications of the procedures at a later
22 date.

23 That concludes the staff report. If there are any
24 questions of staff or, as I said, the vendor would like to
25 comment on at least one of the recommendations.

1 CHAIRPERSON KYLE: Any comments or questions for
2 Mr. Wagaman from the Panel.

3 Mr. Jefferson.

4 PANEL MEMBER JEFFERSON: I'm going to be
5 embarrassed, but what is the write-in resolution function?

6 MR. WAGAMAN: The write-in resolution function is
7 a person on the DRE will cast their ballot, type in the name
8 of the write-in, that is now stored as what's called an
9 unresolved write-in, which you can see what that unresolved
10 write-in was, you can look at it. And then the way it's
11 designed is they can go through and say this one is
12 accepted, this is a certified write-in, this one isn't and
13 reject it, or they can say they wrote in the name of
14 somebody already on the ballot and assign that vote to that
15 particular person on the ballot and do that process.

16 The issue is that when doing so, it will cause in
17 some situations, the summary report will be correct but the
18 precinct reports will not be. The way that is resolved
19 under this system and would be resolved under the
20 recommended certification is they can print a report that
21 has all of the unresolved write-ins and then hand count
22 those back in after the fact. So they can't use the
23 automated function of the system.

24 PANEL MEMBER DANIELS-MEADE: Well, since we're
25 asking silly questions, and I'm not sure if this is silly or

1 not, but I'm not certain, I have to admit by the time I got
2 to this last night it was getting real close to midnight
3 because it's far back in the binder, but there was concern
4 expressed on page 15 with respect to the fail safe for
5 provisional ballots and the inability to resolve those
6 except manually. Do we have something in our recommendation
7 that addresses that issue, because it's not immediately
8 jumping out at me?

9 MR. WAGAMAN: It is not, as I recall, in this
10 particular opinion. And you all have to remember I wrote
11 this a little ways ago, but it's not specifically included
12 in the recommendations for certification, it is included in
13 the procedures. If you want to add it as a condition on the
14 certification, that will be at the Panel's discretion.

15 PANEL MEMBER CARREL: I have two questions. Item
16 Number 4 or Recommendation Number 4, it talks about the
17 source code of the Report Viewer should be successfully
18 reviewed by an independent tester designated by the
19 Secretary of State's office prior to its use in a California
20 primary. I'm wondering does that preclude us requiring
21 federal testing?

22 MR. WAGAMAN: According to the Secretary of State
23 directive, that Report Viewer had to be completed by -- that
24 would have to be done by the federal process, and that's who
25 we would designate as the --

1 PANEL MEMBER CARREL: No. But does this condition
2 mean that we're not requiring it to go through federal
3 testing and get approved by an ITA and NASED?

4 MR. WAGAMAN: That language does not require that
5 it be, and again, at the discretion of the Panel, if you
6 wanted to make that as a requirement that the Report Viewer
7 would have to be federally qualified prior to its use in a
8 California primary, that would be at the Panel's discretion.

9 PANEL MEMBER CARREL: I would so recommend that
10 that change would be made.

11 And then Number 6 and Number 7, the language is
12 similar, but you do talk about as further clarified by the
13 Secretary of State memorandum of understanding and other
14 agreements in 7 and you don't mention it in 6. I'm
15 wondering if that shouldn't be included in 6 as well?

16 MR. WAGAMAN: This language was taken directly
17 from the certification issue that under the Diebold TS
18 certification with modifications for which counties are
19 relevant. So if you would prefer to modify that
20 certification, modify that language, that's again at the
21 Panel's discretion. But that's where the language
22 originated from.

23 PANEL MEMBER CARREL: Well, I'm just suggesting
24 that the security measures contained in the directive may
25 clarify it and modified by the memorandum, and I don't know

1 if there's a different memorandum or if it's the May 14th
2 memorandum which should have been included in 6 as well.

3 MR. WAGAMAN: If that's a modification the Panel
4 takes, staff would take the option of including that in the
5 other items for other DRES that have included that exact
6 same language.

7 PANEL MEMBER JEFFERSON: So another questions
8 regarding Report Viewer. Again considering that we are
9 planning to revisit our entire certification procedures and
10 so on and due to the discussion earlier today and last
11 Thursday, since the Report Viewer is only intended for
12 primary elections.

13 MR. WAGAMAN: The Report Viewer is similar to
14 those additional utilities I described under the Hart
15 system. It can be used to report other additional reports
16 not generated by WinEDS. So the vendor may in fact use it
17 in the general election, but that's the reason the staff
18 recommendation is that you put the same requirements you put
19 on Hart which is that if it's a piece of software that's
20 programmed by the vendor that has not gone through federal
21 testing, that it does not touch the same computer that's
22 running the certified set of systems.

23 PANEL MEMBER JEFFERSON: No. What I was trying to
24 get at is that we are going to be again reconsidering all of
25 our certification standards and so on and all of these

1 systems will be reconsidered, and no matter how we decide to
2 do that, it's going to be well before the next primary; am I
3 correct? And so the language here seems to suggest that the
4 certification we are recommending might last as long as the
5 next primary and I just did not want to leave that
6 impression if that's not our recommendation.

7 MR. WAGAMAN: It's my understanding the vendor's
8 intent is not to use the system, they'll have a new version
9 by then. This was presuming the action that this version is
10 preferred. In the staff recommendation, this version is
11 preferable to the currently certified version, the .99
12 version, as all the problems described herein are common
13 between the .99 and the .134.

14 PANEL MEMBER JEFFERSON: I understand that. I'm
15 just referring to the mention of the primary election,
16 that's all. I understand your point that it's preferable.

17 PANEL MEMBER CARREL: Rethinking, we may just want
18 to strike Number 3 and Number 4 because Report Viewer would
19 only be used in California primaries, and if we don't
20 mention it explicitly, it implicitly needs to go to federal
21 review, and I don't know that there's a need to mention a
22 primary in here either. Leaving 3 in saying that it can't
23 be installed, I think is necessary.

24 MR. WAGAMAN: The only recommendation from staff
25 would be that you would include language that would say the

1 WinEDS cannot be used for a California primary then.

2 PANEL MEMBER CARREL: Yes.

3 CHAIRPERSON KYLE: So that's your recommendation,
4 Marc?

5 PANEL MEMBER CARREL: That would be my
6 recommendation, yes, that WinEDS not be used for a primary
7 and that we then remove 4 and 5. We modify 4 to say that
8 and remove 5. No, I'm sorry, not 5. Let me correct this.
9 We leave in 3 and we change 4 to say that WinEDS cannot be
10 used for a primary, Win Version 3.0.134.

11 CHAIRPERSON KYLE: Other comments from the Panel?

12 PANEL MEMBER JEFFERSON: Just so I understand,
13 Marc, I'm just trying again to be consistent with our
14 previous usage and whatever we say regarding whether this is
15 a certification for one election only or for a time period,
16 however we resolved that issue for Hart and for ES&S, if we
17 revisit the ES&S decisions last Thursday. I just want to
18 make this consistent. But mentioning the primary seems not
19 consistent, mentioning it at all seems not consistent for
20 WinEDS or for Report Viewer, that's what I was trying to get
21 at. Am I misunderstanding?

22 MR. WAGAMAN: I would actually provide two points
23 of clarification. One, this is a unique situation. None of
24 the applications that previously came before the Panel was
25 capable of running a general but not a primary, which is why

1 that additional language would be desired. On a staff
2 level, we would still recommend leaving in the language on
3 3, that would be a parallel to the language that you
4 required for the Hart system that again these additional
5 utilities that have not gone through federal testing not be
6 installed on the same computer that is running the certified
7 qualified software.

8 PANEL MEMBER JEFFERSON: Which means what?

9 MR. WAGAMAN: Report Viewer, is that it provides a
10 very similar function to one of those utilities that was
11 described under the Hart report.

12 PANEL MEMBER MOTT-SMITH: It may be worthwhile to
13 be more precise about the term California primary election
14 because I assume you mean a state direct primary, not a
15 vacancy election nor necessarily if there's a local
16 election?

17 MR. WAGAMAN: Correct. The election it can't run
18 and support is one that requires that split between DTS and
19 declared.

20 PANEL MEMBER MOTT-SMITH: So maybe just say a
21 state direct primary.

22 CHAIRPERSON KYLE: Anything else, John?

23 Lee?

24 Caren?

25 All right. Then does the vendor? You don't have

1 to.

2 MR. BISHNARDO: Thank you. I'm Pat Bishnardo with
3 Sequoia Voting Systems.

4 I think we're comfortable with the recommendation
5 that the clarification as I understand it that Mr. Carrel
6 mentioned about the condition on making sure that the
7 requirements of the directive from the state included both
8 agreements from the state, the county, and the agreements
9 the state has with vendors. I think as long as all that is
10 incorporated, then that was the only concern I had.
11 Everything else would be fine in our opinion.

12 Thank you.

13 CHAIRPERSON KYLE: Any questions or comments?

14 Okay. I believe there are public comments?

15 No, you will pass? Because you're the only one
16 written down.

17 Come forward, Ms. Moyer.

18 You have the floor.

19 MS. MOYER: Lucille Moyer, San Jose, California.

20 I just want to make a comment reading through the
21 compliance with state and federal laws and regulations for
22 Sequoia and also for Diebold. As it turns out, on the
23 WinEDS, it's the administrative review and analysis. Page 5
24 is missing from this report. This gentleman only gave us
25 and made one copy of it for us that has it included, but I

1 think everybody else's package, page 5 is missing.

2 But the section that I'm referring to, this seems
3 to be pretty --

4 CHAIRPERSON KYLE: Before you go on.

5 Is that true and can we make a page 5?

6 AUDIENCE MEMBER: There's 20 full copies up at the
7 back.

8 MS. MOYER: Okay, sorry. It's missing.

9 CHAIRPERSON KYLE: Tab Number 5. For those of you
10 who want a complete set, there's Tab Number 5 up at the
11 table.

12 MS. MOYER: Yes. Thanks for doing that.

13 But what I noticed, it looks like this is
14 information that is just standard for each of these things.
15 But in section, it's Item Number 4, section 103A.4, the
16 system shall be auditable for the purposes of an election
17 recount and contest procedure. The answer for Diebold says
18 the system meets this requirement and the response for
19 Sequoia is a little bit longer. But that's not what my
20 concern is.

21 My concern is that in both cases they may be
22 auditable for who handled what, when, and where, but they
23 are not suitable for a recount because you can't recount
24 them. Bringing up my same subject, you cannot recount the
25 votes accurately, because there are no votes to recount.

1 It's all electronic and it's just going to regurgitate the
2 same identical information. If there is any kind of a close
3 call between candidates, when it's recounted you're going to
4 get the exact same information, it's not going to be
5 recountable because there's no paper ballot. So I just want
6 to go on record once again as stating we need to go back to
7 paper ballots.

8 And the other question that I have is that the
9 Panel didn't respond, Mr. Jefferson did privately when we
10 talked, about what are you going to do when you find out
11 there's a big problem at election time. Mr. Wagaman said to
12 me it's up to the counties to certify the vote in their
13 counties to resolve any issues if big discrepancies are
14 quite obvious. You know, I think another lady in the
15 audience mentioned that in a hispanic community most
16 oftentimes you would expect a higher percentage of the vote
17 to go to the hispanic candidate, and in some elections, that
18 didn't happen, and those were glaring probably warning
19 signals or red flags to take a look at the vote.

20 But what I still want to know and I'm hoping I'm
21 going to get some kind of answer today, in general, is what
22 are you going to do, what's the procedure, you know? The
23 Panel here is doing its best to resolve all the issues, but
24 you're handing out your decisions to the counties and
25 approving what are we going to do, approve and certify these

1 machines. But then to have the counties be responsible for
2 figuring this out when the voters are flipping out in their
3 counties, it seems to me unfair.

4 I'd like to know what the Panel or the state has
5 decided to do in the case that it's clearly been that a vote
6 has clearly been fraud or error or whatever. And I would
7 like some comment from the Panel today about what the
8 responsibilities is here for fixing it. Thank you.

9 CHAIRPERSON KYLE: You're welcome.

10 Just for point of information, we'll take your
11 question under submission. You're welcome to stick around
12 and talk with the Panel or staff afterwards, but it's not
13 our role to answer every question that comes up, though we
14 try to address a lot of them that are relevant and on point
15 to the agenda items.

16 MS. MOYER: Well, is there any kind of --

17 CHAIRPERSON KYLE: So after the meeting, if you
18 want to come up and talk, then you can do it. Otherwise we
19 can engage in e-mail responses. And there is an answer to
20 your question, at least in part. Whether you will find it
21 satisfactory, I don't know, but there's an answer.

22 And Ms. Smith.

23 MS. SMITH: Less than half a minute.

24 Maureen Smith.

25 I just want to go on record that Peace and Freedom

1 Party opposes any and all systems that have any ability for
2 breach of security, and that would include this one with the
3 backdoor.

4 Thank you.

5 CHAIRPERSON KYLE: Thank you.

6 Any questions or comments from the Panel?

7 PANEL MEMBER CARREL: Is there a motion?

8 CHAIRPERSON KYLE: No, there's not a motion. I
9 would entertain a motion in any direction from anyone.

10 PANEL MEMBER CARREL: I would so move using the
11 conditions expressed earlier by staff.

12 PANEL MEMBER DANIELS-MEADE: Second.

13 MR. WAGAMAN: As a point of clarification, would
14 that include or not include striking Item Number 3.

15 CHAIRPERSON KYLE: Because it was first
16 recommended that it would, then your recommendation that it
17 would not.

18 MR. WAGAMAN: And I'm not a member of the Panel.

19 PANEL MEMBER CARREL: I would prefer to keep Item
20 Number 3. I think the question was how to address the term
21 primary that was Item Number 4 was the resolution on that.

22 MR. WAGAMAN: State direct primary election is the
23 language I heard from Mr. Mott-Smith.

24 CHAIRPERSON KYLE: So can we go through those
25 conditions again?

1 MR. WAGAMAN: One, the vendor must submit the
2 final ITA reports by September 27th, 2004. Two, that they
3 must contain a federal qualification by the same date.
4 Three, that the Report Viewer should not be installed on the
5 same computer running WinEDS. Four, that WinEDS shall not
6 be used in a California state direct primary election.

7 CHAIRPERSON KYLE: So modified from its current?

8 MR. WAGAMAN: Correct. Four will be modified.
9 Five would be as written, the write-in resolution function
10 should not be used.

11 Six would be modified that after the period it
12 would add as further clarified by the Secretary of State's
13 memorandum dated May 14th, 2004, and any other agreement
14 between the vendor and the Secretary of State.

15 CHAIRPERSON KYLE: Correct. And also make it
16 contained rather than contain.

17 MR. WAGAMAN: Item Number 7 would read as
18 originally, with the modification from the Chair.

19 Item Number 8 would again read as written.

20 And Item Number 9 would read as written.

21 CHAIRPERSON KYLE: Were there any others?

22 PANEL MEMBER DANIELS-MEADE: We're not going to
23 address the issue of testing it all then in our
24 recommendation? Testing WinEDS. Report Viewer, I'm sorry.

25 PANEL MEMBER CARREL: No, it's been removed.

1 MR. WAGAMAN: We've removed that, right. That's
2 correct.

3 PANEL MEMBER CARREL: Which would instead imply
4 that we would need to have a certification so we don't want
5 to confuse that issue.

6 PANEL MEMBER DANIELS-MEADE: I understand that. I
7 just want to make sure we're not addressing it in that.

8 CHAIRPERSON KYLE: Any discussion on the motion?
9 All those in favor?

10 (Ayes.)

11 CHAIRPERSON KYLE: Those opposed?

12 Any abstentions?

13 The ayes have it.

14 Going to the last agenda item, other business. We
15 have reports.

16 MR. WAGAMAN: A couple of reports back. I'll go
17 back to my notes.

18 We have a letter we received today from Brian
19 Hancock of the federal process. The ES&S federal NASED
20 number should be issued by Friday. So we have received
21 that. Friday of this week is the 17th.

22 CHAIRPERSON KYLE: On which items?

23 MR. WAGAMAN: On all of the items contained in
24 that, it would be the Unity, Model 550, Model 650. There
25 would be other components contained within that federal

1 qualification that were not contained in the state
2 certification.

3 We're going to report back on local stuff in
4 general, I will put together a more detailed report for the
5 Secretary for consideration on that issue.

6 And I forgot to bring the other thing.

7 CHAIRPERSON KYLE: Thank you. Any other report?

8 PANEL MEMBER JEFFERSON: Just a question about the
9 report.

10 CHAIRPERSON KYLE: Okay.

11 Mr. Jefferson.

12 PANEL MEMBER JEFFERSON: As it stands, if we do
13 not get that certification for the ES&S systems that we
14 conditionally certified last week by Friday, does that mean
15 that they will not be used? In other words, is this a hard
16 deadline this time?

17 MR. WAGAMAN: Well, the hard deadline is what's
18 contained in the certification which was the 21st, which is
19 the following Tuesday, I believe.

20 PANEL MEMBER JEFFERSON: Okay.

21 MR. WAGAMAN: But I'm reporting back that we
22 expect it by Friday.

23 PANEL MEMBER JEFFERSON: Thank you.

24 MR. WAGAMAN: And that's from the ITA itself, it's
25 not a notification from the vendor.

1 PANEL MEMBER CARREL: And on the reports, the
2 staff reports that you forgot today, can you distribute them
3 as part of our binder materials for the next meeting and
4 then report on them.

5 MR. WAGAMAN: That was the intent was to include
6 it as a tab in the binder and I didn't realize it didn't
7 make its way in there and therefore I don't have it with me.

8 PANEL MEMBER CARREL: Thank you.

9 MR. WAGAMAN: It was intended to be a tab 20.

10 PANEL MEMBER CARREL: Thank you.

11 CHAIRPERSON KYLE: Okay. There was one person
12 wishing to comment on other business.

13 Ms. Smith, was there anything you wanted to say?

14 MS. SMITH: Yes, thank you.

15 Maureen Smith, again, the last time today, at
16 least.

17 I'm still on the issue of the paper ballots. I
18 met with Jess Durazo and his assistant in Santa Clara
19 County, and it appears to me that they are trying their best
20 to have some kind of paper, up to the point of even allowing
21 people to use their sample ballots, which sounds very good
22 to me. This is what I was told, that they were approved by
23 the Board of Supervisors for additional paper ballots, not
24 counting absentee ballots, 25 percent of the expected
25 turnout at the polls, regular paper ballots. Then they had

1 another line of defense, if you want to call it that, of
2 having provisional ballots to be used for those who want
3 paper ballots. And the final thing was allowing people to
4 use their sample ballots as their voting ballot.

5 So I actually was pleased by that. I hope it's
6 the same plan he turned in.

7 What I wanted to know, if the other Sequoia
8 counties are doing a similar thing or if this is even
9 something that you know. It's part of your whole process, I
10 don't think I'm out of order in asking this in any way,
11 because Kevin Shelley said that, you know, everybody will be
12 entitled to a paper ballot at the polls. That's my first
13 question.

14 The second one is related to, again, but only this
15 time to the money. I did write to Governor Schwarzenegger,
16 I did not get an answer, but I heard yesterday that some of
17 the HAVA monies had been released, and I was wondering if
18 you knew about it and if it included that money that would
19 allow you to do the advertising for a person's right to a
20 paper ballot?

21 CHAIRPERSON KYLE: Mr. Carrel, do you want to
22 speak to that?

23 PANEL MEMBER CARREL: On that issue,
24 unfortunately, the funds that were released by the
25 administration and the Department of Finance did not include

1 voter education funds, except those funds used by counties
2 for voter education, specifically or exclusively requested
3 by them for that purpose. We don't have control over what
4 -- we're not coordinating what each county is doing
5 individually, our statewide program for voter education was
6 not approved so we can't spend money on that at the state
7 level.

8 MS. SMITH: Thank you.

9 CHAIRPERSON KYLE: That's not the most current
10 information though. We have yet to receive a response from
11 our most recent request for funding. So your letter has not
12 been sent, we await a response. We may find something out
13 today.

14 PANEL MEMBER CARREL: Yes. Just to clarify, the
15 first set of money did not included that, although we did
16 ask again, and that leaves us back where we are.

17 CHAIRPERSON KYLE: Thank you for your help.

18 And as to the first question, I can't remember,
19 but if you come up afterwards, I'm sure I can answer it.

20 I'm going to entertain a motion to adjourn.

21 PANEL MEMBER DANIELS-MEADE: So moved.

22 PANEL MEMBER CARREL: Seconded.

23 CHAIRPERSON KYLE: All those in favor?

24 (Ayes.)

25 CHAIRPERSON KYLE: Opposed?

1 Then the meeting is adjourned.
2 Thank you very much all for attending.
3 (Thereupon the meeting of the Voting
4 Systems and Procedures Panel was
5 concluded at 12:46 p.m. on September 14,
6 2004.)

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CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing Voting Systems Panel proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Voting Systems Panel proceedings, or in any way interested in the outcome of said Voting Systems Panel proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of October 2004.

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